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Title 3—

The President

Executive Order 13859 of February 11, 2019

Maintaining American Leadership in Artificial Intelligence

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Policy and Principles.* Artificial Intelligence (AI) promises to drive growth of the United States economy, enhance our economic and national security, and improve our quality of life. The United States is the world leader in AI research and development (R&D) and deployment. Continued American leadership in AI is of paramount importance to maintaining the economic and national security of the United States and to shaping the global evolution of AI in a manner consistent with our Nation's values, policies, and priorities. The Federal Government plays an important role in facilitating AI R&D, promoting the trust of the American people in the development and deployment of AI-related technologies, training a workforce capable of using AI in their occupations, and protecting the American AI technology base from attempted acquisition by strategic competitors and adversarial nations. Maintaining American leadership in AI requires a concerted effort to promote advancements in technology and innovation, while protecting American technology, economic and national security, civil liberties, privacy, and American values and enhancing international and industry collaboration with foreign partners and allies. It is the policy of the United States Government to sustain and enhance the scientific, technological, and economic leadership position of the United States in AI R&D and deployment through a coordinated Federal Government strategy, the American AI Initiative (Initiative), guided by five principles:

(a) The United States must drive technological breakthroughs in AI across the Federal Government, industry, and academia in order to promote scientific discovery, economic competitiveness, and national security.

(b) The United States must drive development of appropriate technical standards and reduce barriers to the safe testing and deployment of AI technologies in order to enable the creation of new AI-related industries and the adoption of AI by today's industries.

(c) The United States must train current and future generations of American workers with the skills to develop and apply AI technologies to prepare them for today's economy and jobs of the future.

(d) The United States must foster public trust and confidence in AI technologies and protect civil liberties, privacy, and American values in their application in order to fully realize the potential of AI technologies for the American people.

(e) The United States must promote an international environment that supports American AI research and innovation and opens markets for American AI industries, while protecting our technological advantage in AI and protecting our critical AI technologies from acquisition by strategic competitors and adversarial nations.

Sec. 2. *Objectives.* Artificial Intelligence will affect the missions of nearly all executive departments and agencies (agencies). Agencies determined to be implementing agencies pursuant to section 3 of this order shall pursue six strategic objectives in furtherance of both promoting and protecting American advancements in AI:

(a) Promote sustained investment in AI R&D in collaboration with industry, academia, international partners and allies, and other non-Federal entities

to generate technological breakthroughs in AI and related technologies and to rapidly transition those breakthroughs into capabilities that contribute to our economic and national security.

(b) Enhance access to high-quality and fully traceable Federal data, models, and computing resources to increase the value of such resources for AI R&D, while maintaining safety, security, privacy, and confidentiality protections consistent with applicable laws and policies.

(c) Reduce barriers to the use of AI technologies to promote their innovative application while protecting American technology, economic and national security, civil liberties, privacy, and values.

(d) Ensure that technical standards minimize vulnerability to attacks from malicious actors and reflect Federal priorities for innovation, public trust, and public confidence in systems that use AI technologies; and develop international standards to promote and protect those priorities.

(e) Train the next generation of American AI researchers and users through apprenticeships; skills programs; and education in science, technology, engineering, and mathematics (STEM), with an emphasis on computer science, to ensure that American workers, including Federal workers, are capable of taking full advantage of the opportunities of AI.

(f) Develop and implement an action plan, in accordance with the National Security Presidential Memorandum of February 11, 2019 (Protecting the United States Advantage in Artificial Intelligence and Related Critical Technologies) (the NSPM) to protect the advantage of the United States in AI and technology critical to United States economic and national security interests against strategic competitors and foreign adversaries.

Sec. 3. *Roles and Responsibilities.* The Initiative shall be coordinated through the National Science and Technology Council (NSTC) Select Committee on Artificial Intelligence (Select Committee). Actions shall be implemented by agencies that conduct foundational AI R&D, develop and deploy applications of AI technologies, provide educational grants, and regulate and provide guidance for applications of AI technologies, as determined by the co-chairs of the NSTC Select Committee (implementing agencies).

Sec. 4. *Federal Investment in AI Research and Development.*

(a) Heads of implementing agencies that also perform or fund R&D (AI R&D agencies), shall consider AI as an agency R&D priority, as appropriate to their respective agencies' missions, consistent with applicable law and in accordance with the Office of Management and Budget (OMB) and the Office of Science and Technology Policy (OSTP) R&D priorities memoranda. Heads of such agencies shall take this priority into account when developing budget proposals and planning for the use of funds in Fiscal Year 2020 and in future years. Heads of these agencies shall also consider appropriate administrative actions to increase focus on AI for 2019.

(b) Heads of AI R&D agencies shall budget an amount for AI R&D that is appropriate for this prioritization.

(i) Following the submission of the President's Budget request to the Congress, heads of such agencies shall communicate plans for achieving this prioritization to the OMB Director and the OSTP Director each fiscal year through the Networking and Information Technology Research and Development (NITRD) Program.

(ii) Within 90 days of the enactment of appropriations for their respective agencies, heads of such agencies shall identify each year, consistent with applicable law, the programs to which the AI R&D priority will apply and estimate the total amount of such funds that will be spent on each such program. This information shall be communicated to the OMB Director and OSTP Director each fiscal year through the NITRD Program.

(c) To the extent appropriate and consistent with applicable law, heads of AI R&D agencies shall explore opportunities for collaboration with non-

Federal entities, including: the private sector; academia; non-profit organizations; State, local, tribal, and territorial governments; and foreign partners and allies, so all collaborators can benefit from each other's investment and expertise in AI R&D.

Sec. 5. *Data and Computing Resources for AI Research and Development.*

(a) Heads of all agencies shall review their Federal data and models to identify opportunities to increase access and use by the greater non-Federal AI research community in a manner that benefits that community, while protecting safety, security, privacy, and confidentiality. Specifically, agencies shall improve data and model inventory documentation to enable discovery and usability, and shall prioritize improvements to access and quality of AI data and models based on the AI research community's user feedback.

(i) Within 90 days of the date of this order, the OMB Director shall publish a notice in the *Federal Register* inviting the public to identify additional requests for access or quality improvements for Federal data and models that would improve AI R&D and testing. Additionally, within 90 days of the date of this order, OMB, in conjunction with the Select Committee, shall investigate barriers to access or quality limitations of Federal data and models that impede AI R&D and testing. Collectively, these actions by OMB will help to identify datasets that will facilitate non-Federal AI R&D and testing.

(ii) Within 120 days of the date of this order, OMB, including through its interagency councils and the Select Committee, shall update implementation guidance for Enterprise Data Inventories and Source Code Inventories to support discovery and usability in AI R&D.

(iii) Within 180 days of the date of this order, and in accordance with the implementation of the Cross-Agency Priority Goal: Leveraging Federal Data as a Strategic Asset, from the March 2018 President's Management Agenda, agencies shall consider methods of improving the quality, usability, and appropriate access to priority data identified by the AI research community. Agencies shall also identify any associated resource implications.

(iv) In identifying data and models for consideration for increased public access, agencies, in coordination with the Senior Agency Officials for Privacy established pursuant to Executive Order 13719 of February 9, 2016 (Establishment of the Federal Privacy Council), the heads of Federal statistical entities, Federal program managers, and other relevant personnel shall identify any barriers to, or requirements associated with, increased access to and use of such data and models, including:

(A) privacy and civil liberty protections for individuals who may be affected by increased access and use, as well as confidentiality protections for individuals and other data providers;

(B) safety and security concerns, including those related to the association or compilation of data and models;

(C) data documentation and formatting, including the need for interoperable and machine-readable data formats;

(D) changes necessary to ensure appropriate data and system governance; and

(E) any other relevant considerations.

(v) In accordance with the President's Management Agenda and the Cross-Agency Priority Goal: Leveraging Data as a Strategic Asset, agencies shall identify opportunities to use new technologies and best practices to increase access to and usability of open data and models, and explore appropriate controls on access to sensitive or restricted data and models, consistent with applicable laws and policies, privacy and confidentiality protections, and civil liberty protections.

(b) The Secretaries of Defense, Commerce, Health and Human Services, and Energy, the Administrator of the National Aeronautics and Space Administration, and the Director of the National Science Foundation shall, to the extent appropriate and consistent with applicable law, prioritize the allocation of high-performance computing resources for AI-related applications through:

(i) increased assignment of discretionary allocation of resources and resource reserves; or

(ii) any other appropriate mechanisms.

(c) Within 180 days of the date of this order, the Select Committee, in coordination with the General Services Administration (GSA), shall submit a report to the President making recommendations on better enabling the use of cloud computing resources for federally funded AI R&D.

(d) The Select Committee shall provide technical expertise to the American Technology Council on matters regarding AI and the modernization of Federal technology, data, and the delivery of digital services, as appropriate.

Sec. 6. *Guidance for Regulation of AI Applications.*

(a) Within 180 days of the date of this order, the OMB Director, in coordination with the OSTP Director, the Director of the Domestic Policy Council, and the Director of the National Economic Council, and in consultation with any other relevant agencies and key stakeholders as the OMB Director shall determine, shall issue a memorandum to the heads of all agencies that shall:

(i) inform the development of regulatory and non-regulatory approaches by such agencies regarding technologies and industrial sectors that are either empowered or enabled by AI, and that advance American innovation while upholding civil liberties, privacy, and American values; and

(ii) consider ways to reduce barriers to the use of AI technologies in order to promote their innovative application while protecting civil liberties, privacy, American values, and United States economic and national security.

(b) To help ensure public trust in the development and implementation of AI applications, OMB shall issue a draft version of the memorandum for public comment before it is finalized.

(c) Within 180 days of the date of the memorandum described in subsection (a) of this section, the heads of implementing agencies that also have regulatory authorities shall review their authorities relevant to applications of AI and shall submit to OMB plans to achieve consistency with the memorandum.

(d) Within 180 days of the date of this order, the Secretary of Commerce, through the Director of the National Institute of Standards and Technology (NIST), shall issue a plan for Federal engagement in the development of technical standards and related tools in support of reliable, robust, and trustworthy systems that use AI technologies. NIST shall lead the development of this plan with participation from relevant agencies as the Secretary of Commerce shall determine.

(i) Consistent with OMB Circular A–119, this plan shall include:

(A) Federal priority needs for standardization of AI systems development and deployment;

(B) identification of standards development entities in which Federal agencies should seek membership with the goal of establishing or supporting United States technical leadership roles; and

(C) opportunities for and challenges to United States leadership in standardization related to AI technologies.

(ii) This plan shall be developed in consultation with the Select Committee, as needed, and in consultation with the private sector, academia, nongovernmental entities, and other stakeholders, as appropriate.

Sec. 7. *AI and the American Workforce.*

(a) Heads of implementing agencies that also provide educational grants shall, to the extent consistent with applicable law, consider AI as a priority area within existing Federal fellowship and service programs.

(i) Eligible programs for prioritization shall give preference to American citizens, to the extent permitted by law, and shall include:

(A) high school, undergraduate, and graduate fellowship; alternative education; and training programs;

(B) programs to recognize and fund early-career university faculty who conduct AI R&D, including through Presidential awards and recognitions;

(C) scholarship for service programs;

(D) direct commissioning programs of the United States Armed Forces; and

(E) programs that support the development of instructional programs and curricula that encourage the integration of AI technologies into courses in order to facilitate personalized and adaptive learning experiences for formal and informal education and training.

(ii) Agencies shall annually communicate plans for achieving this prioritization to the co-chairs of the Select Committee.

(b) Within 90 days of the date of this order, the Select Committee shall provide recommendations to the NSTC Committee on STEM Education regarding AI-related educational and workforce development considerations that focus on American citizens.

(c) The Select Committee shall provide technical expertise to the National Council for the American Worker on matters regarding AI and the American workforce, as appropriate.

Sec. 8. *Action Plan for Protection of the United States Advantage in AI Technologies.*

(a) As directed by the NSPM, the Assistant to the President for National Security Affairs, in coordination with the OSTP Director and the recipients of the NSPM, shall organize the development of an action plan to protect the United States advantage in AI and AI technology critical to United States economic and national security interests against strategic competitors and adversarial nations.

(b) The action plan shall be provided to the President within 120 days of the date of this order, and may be classified in full or in part, as appropriate.

(c) Upon approval by the President, the action plan shall be implemented by all agencies who are recipients of the NSPM, for all AI-related activities, including those conducted pursuant to this order.

Sec. 9. *Definitions.* As used in this order:

(a) the term ''artificial intelligence'' means the full extent of Federal investments in AI, to include: R&D of core AI techniques and technologies; AI prototype systems; application and adaptation of AI techniques; architectural and systems support for AI; and cyberinfrastructure, data sets, and standards for AI; and

(b) the term ''open data'' shall, in accordance with OMB Circular A–130 and memorandum M–13–13, mean ''publicly available data structured in a way that enables the data to be fully discoverable and usable by end users.''

Sec. 10. *General Provisions.*

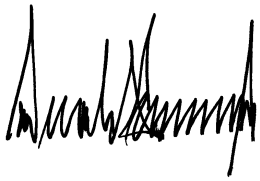
(a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of OMB relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
February 11, 2019.

[FR Doc. 2019–02544
Filed 2–13–19; 8:45 am]
Billing code 3295–F9–P

Rules and Regulations

Federal Register
Vol. 84, No. 31
Thursday, February 14, 2019

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 97

[Docket No. 31236; Amdt. No. 3838]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective February 14, 2019. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 14, 2019.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops-M30, 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001;

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. 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/code_of_federal_regulations/ibr_locations.html.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center online at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., Registry Bldg. 29, Room 104, Oklahoma City, OK 73125. Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (NFDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained on FAA form documents is unnecessary.

This amendment provides the affected CFR sections, and specifies the SIAPs and Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPs, Takeoff Minimums and ODPs as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP and Takeoff Minimums and ODP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP and Takeoff Minimums and ODP as modified by FDC permanent NOTAMs.

The SIAPs and Takeoff Minimums and ODPs, as modified by FDC permanent NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for these SIAP and Takeoff Minimums and ODP amendments require making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making these SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established

body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on January 25, 2019.

Rick Domingo,

Executive Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal regulations, Part 97, (14 CFR part 97), is amended by amending Standard Instrument Approach Procedures and Takeoff Minimums and ODPs, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

AIRAC Date	State	City	Airport	FDC No.	FDC Date	Subject
28–Feb–19	AL	Vernon	Lamar County	8/7374	1/8/19	This NOTAM, published in TL 19–05, is hereby rescinded in its entirety.
28–Feb–19	WY	Thermopolis	Hot Springs County	8/0969	1/11/19	Takeoff Minimums and Obstacle DP, Orig.
28–Feb–19	HI	Honolulu	Daniel K Inouye Intl	8/1093	1/11/19	RNAV (RNP) RWY 26L, Orig-D.
28–Feb–19	TX	Pleasanton	Pleasanton Muni	8/1851	1/11/19	RNAV (GPS) RWY 34, Orig.
28–Feb–19	KS	St Francis	Cheyenne County Muni	8/1913	1/11/19	NDB–A, Orig.
28–Feb–19	KS	St Francis	Cheyenne County Muni	8/1914	1/11/19	RNAV (GPS) RWY 32, Orig.
28–Feb–19	WY	Cheyenne	Cheyenne Rgnl/Jerry Olson Field.	8/2432	1/11/19	RNAV (GPS) RWY 13, Amdt 2.
28–Feb–19	WY	Cheyenne	Cheyenne Rgnl/Jerry Olson Field.	8/2433	1/11/19	RNAV (GPS) RWY 27, Amdt 1.
28–Feb–19	WY	Cheyenne	Cheyenne Rgnl/Jerry Olson Field.	8/2437	1/11/19	RNAV (GPS) RWY 31, Amdt 2.
28–Feb–19	MI	Clare	Clare Muni	8/2566	1/11/19	VOR–A, Amdt 2.
28–Feb–19	MI	Clare	Clare Muni	8/2567	1/11/19	RNAV (GPS) RWY 4, Orig-A.
28–Feb–19	IL	Bloomington/Normal	Central Il Rgnl Arpt At Bloomington-Normal.	8/2864	1/11/19	RNAV (GPS) RWY 2, Orig-B.
28–Feb–19	TX	Center	Center Muni	8/2868	1/11/19	RNAV (GPS) RWY 17, Orig-B.
28–Feb–19	OK	Woodward	West Woodward	8/3087	1/11/19	RNAV (GPS) RWY 17, Orig.
28–Feb–19	OK	Woodward	West Woodward	8/3088	1/11/19	VOR/DME–A, Amdt 7.
28–Feb–19	OK	Woodward	West Woodward	8/3089	1/11/19	RNAV (GPS) RWY 35, Orig.
28–Feb–19	OR	Eugene	Mahlon Sweet Field	8/3159	1/11/19	VOR OR TACAN RWY 16R, Amdt 5C.
28–Feb–19	IN	Indianapolis	Indianapolis Rgnl	8/4907	1/11/19	RNAV (GPS) RWY 16, Amdt 1A.
28–Feb–19	WI	Solon Springs	Solon Springs Muni	8/5035	1/11/19	RNAV (GPS) RWY 19, Orig-A.
28–Feb–19	OK	Guymon	Guymon Muni	8/5211	1/11/19	NDB RWY 18, Amdt 5B.
28–Feb–19	MO	Marshall	Marshall Memorial Muni.	8/5548	1/11/19	RNAV (GPS) RWY 18, Amdt 2A.
28–Feb–19	OK	Miami	Miami Rgnl	8/5550	1/11/19	RNAV (GPS) RWY 17, Amdt 1.
28–Feb–19	MN	Tracy	Tracy Muni	8/5889	1/11/19	RNAV (GPS) RWY 29, Orig.
28–Feb–19	MN	Tracy	Tracy Muni	8/5893	1/11/19	RNAV (GPS) RWY 11, Orig.
28–Feb–19	IA	Cresco	Ellen Church Field	8/6447	1/10/19	GPS RWY 15, Orig-A.
28–Feb–19	IA	Cresco	Ellen Church Field	8/6448	1/10/19	GPS RWY 33, Orig-A.
28–Feb–19	IL	Dixon	Dixon Muni-Charles R Walgreen Field.	8/6720	1/11/19	RNAV (GPS) RWY 8, Amdt 1B.
28–Feb–19	IL	Dixon	Dixon Muni-Charles R Walgreen Field.	8/6722	1/11/19	RNAV (GPS) RWY 26, Orig-B.
28–Feb–19	IL	Dixon	Dixon Muni-Charles R Walgreen Field.	8/6724	1/11/19	VOR–A, Amdt 10B.
28–Feb–19	MI	Grand Rapids	Gerald R Ford Intl	8/7765	1/11/19	ILS OR LOC RWY 35, Amdt 2.
28–Feb–19	AR	Ash Flat	Sharp County Rgnl	8/7781	1/11/19	RNAV (GPS) RWY 4, Orig-A.
28–Feb–19	AR	Ash Flat	Sharp County Rgnl	8/7783	1/11/19	RNAV (GPS) RWY 22, Orig.
28–Feb–19	IN	Greensburg	Greensburg Municipal	8/7917	1/11/19	RNAV (GPS) RWY 36, Orig-A.
28–Feb–19	WI	Ephraim	Ephraim-Gibraltar	8/7956	1/11/19	RNAV (GPS) RWY 14, Orig.
28–Feb–19	WI	Ephraim	Ephraim-Gibraltar	8/7957	1/11/19	RNAV (GPS) RWY 32, Orig.
28–Feb–19	WY	Big Piney	Miley Memorial Field	8/8218	1/11/19	RNAV (GPS) RWY 31, Orig-C.
28–Feb–19	WY	Big Piney	Miley Memorial Field	8/8227	1/11/19	VOR RWY 31, Amdt 3D.
28–Feb–19	CA	Sacramento	Sacramento Executive	8/8322	1/11/19	ILS OR LOC RWY 2, Amdt 24C.

AIRAC Date	State	City	Airport	FDC No.	FDC Date	Subject
28–Feb–19	IN	Fort Wayne	Smith Field	8/8464	1/11/19	RNAV (GPS) RWY 5, Orig.
28–Feb–19	ND	Watford City	Watford City Muni	8/8958	1/11/19	RNAV (GPS) RWY 30, Orig-A.
28–Feb–19	FM	Weno Island	Chuuk Intl	8/9501	1/11/19	NDB RWY 22, Orig.
28–Feb–19	FM	Weno Island	Chuuk Intl	8/9502	1/11/19	NDB RWY 4, Amdt 1.
28–Feb–19	FM	Weno Island	Chuuk Intl	8/9503	1/11/19	RNAV (GPS) RWY 22, Orig.
28–Feb–19	FM	Weno Island	Chuuk Intl	8/9508	1/11/19	RNAV (GPS) RWY 4, Amdt 1.
28–Feb–19	IL	Belleville	Scott AFB/MidAmerica	8/9728	1/11/19	ILS OR LOC RWY 32R, Orig-I.
28–Feb–19	OH	Waverly	Pike County	8/9930	1/11/19	RNAV (GPS) RWY 25, Amdt 1.
28–Feb–19	KS	Larned	Larned-Pawnee County	9/0553	1/10/19	RNAV (GPS) RWY 35, Orig-A.
28–Feb–19	OR	Mc Minnville	Mc Minnville Muni	9/1864	1/17/19	RNAV (GPS) RWY 4, Orig-B.
28–Feb–19	TX	Del Rio	Del Rio Intl	9/2477	1/18/19	RNAV (GPS) RWY 13, Amdt 2.
28–Feb–19	TX	Del Rio	Del Rio Intl	9/2478	1/18/19	ILS OR LOC RWY 13, Orig.
28–Feb–19	GA	Columbus	Columbus	9/4515	1/16/19	RNAV (GPS) RWY 13, Orig-B.
28–Feb–19	CA	San Francisco	San Francisco Intl	9/4834	1/17/19	ILS OR LOC RWY 28L, ILS RWY 28L (SA CAT II), Amdt 27A.
28–Feb–19	AR	Batesville	Batesville Rgnl	9/4883	1/17/19	Takeoff Minimums and Obstacle DP, Amdt 3.
28–Feb–19	ND	Watford City	Watford City Muni	9/5039	1/18/19	RNAV (GPS) RWY 12, Orig-B.
28–Feb–19	AL	Vernon	Lamar County	9/5051	1/18/19	RNAV (GPS) RWY 35, Orig.

[FR Doc. 2019–02073 Filed 2–13–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31231; Amdt. No. 3833]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures (ODPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective February 14, 2019. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of February 14, 2019.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops–M30, 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001.
2. The FAA Air Traffic Organization Service Area in which the affected airport is located;
3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,
4. 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/code_of_federal_regulations/ibr_locations.html.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., Registry Bldg 29, Room 104, Oklahoma City, OK 73125. Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or removes SIAPS, Takeoff Minimums and/or ODPS. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, their complex nature, and the need for a special format make publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs, Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure, and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPS, Takeoff Minimums and/or ODPS as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as Amended in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making some SIAPs effective in less than 30 days.

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

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on December 28, 2018.

Rick Domingo,

Executive Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or removing Standard Instrument Approach Procedures and/or Takeoff Minimums and Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 31 January 2019

Eagle, CO, Eagle County Rgnl, LDA RWY 25, Amdt 1A
Fort Lauderdale, FL, Fort Lauderdale/Hollywood Intl, RNAV (RNP) Y RWY 10L, Amdt 1C
Montgomery, NY, Orange County, RNAV (GPS) RWY 8, Amdt 1C
Montgomery, NY, Orange County, RNAV (GPS) RWY 22, Orig-A

Effective 28 February 2019

Selawik, AK, Selawik, RNAV (GPS) RWY 4, Orig-D
Selawik, AK, Selawik, RNAV (GPS) RWY 27, Orig-B
Selawik, AK, Selawik, RNAV (GPS) Y RWY 22, Orig-D
Selawik, AK, Selawik, RNAV (GPS) Z RWY 22, Orig-C
Selawik, AK, Selawik, VOR RWY 4, Amdt 1C
Selawik, AK, Selawik, VOR RWY 22, Amdt 1C
Huntsville, AL, Huntsville Executive Tom Sharp Jr Field, RNAV (GPS) RWY 18, Amdt 2B
Huntsville, AL, Huntsville Executive Tom Sharp Jr Field, RNAV (GPS) RWY 36, Amdt 1B
Concord, CA, Buchanan Field, LDA RWY 19R, Amdt 9
Long Beach, CA, Long Beach/Daugherty Field/, ILS OR LOC RWY 30, Amdt 35
Long Beach, CA, Long Beach/Daugherty Field/, RNAV (GPS) Z RWY 30, Amdt 4
Long Beach, CA, Long Beach/Daugherty Field/, RNAV (RNP) Y RWY 30, Amdt 3
San Diego, CA, Montgomery-Gibbs Executive, ILS OR LOC RWY 28R, Amdt 4C
San Diego, CA, Montgomery-Gibbs Executive, RNAV (GPS) RWY 28R, Amdt 1C
Sebastian, FL, Sebastian Muni, RNAV (GPS)-A, Orig-A
Sebastian, FL, Sebastian Muni, RNAV (GPS)-B, Orig-A
Thomasville, GA, Thomasville Rgnl, ILS OR LOC RWY 22, Amdt 2
Cherokee, IA, Cherokee County Rgnl, RNAV (GPS) RWY 36, Amdt 1
Cherokee, IA, Cherokee County Rgnl, RNAV (GPS) Z RWY 36, Orig-B, CANCELED
Storm Lake, IA, Storm Lake Muni, RNAV (GPS) RWY 17, Orig-C
Belleville, IL, Scott AFB/MidAmerica, ILS OR LOC RWY 32L, Amdt 2A
Chicago, IL, Chicago O'Hare Intl, ILS OR LOC RWY 4R. Amdt 7B
Washington, IN, Daviess County, Takeoff Minimums and Obstacle DP, Orig-A
Galliano, LA, South Lafourche Leonard Miller Jr, ILS OR LOC RWY 36, Amdt 2
Monroe, LA, Monroe Rgnl, RNAV (GPS) RWY 14, Orig
New Orleans, LA, Louis Armstrong New Orleans Intl, ILS OR LOC RWY 2, Amdt 19
Bangor, ME, Bangor Intl, VOR–A, Amdt 3, CANCELED
Warroad, MN, Warroad Intl Memorial, RNAV (GPS) RWY 31, Orig-A
Rutherfordton, NC, Rutherfordton Co—Marchman Field, Takeoff Minimums and Obstacle DP, Amdt 4
Manville, NJ, Central Jersey Rgnl, Takeoff Minimums and Obstacle DP, Amdt 4
Morristown, NJ, Morristown Muni, Takeoff Minimums and Obstacle DP, Amdt 7
Fulton, NY, Oswego County, ILS OR LOC RWY 33, Amdt 2
Fulton, NY, Oswego County, RNAV (GPS) RWY 33, Amdt 1
Malone, NY, Malone-Dufort, RNAV (GPS) RWY 5, Orig-B
Malone, NY, Malone-Dufort, RNAV (GPS) RWY 23, Orig-C
New York, NY, LaGuardia, RNAV (GPS) Y RWY 31, Orig
New York, NY, LaGuardia, RNAV (GPS) Z RWY 31, Amdt 1F
Rome, NY, Griffiss Intl, RNAV (GPS) RWY 33, Amdt 2A
Cadiz, OH, Harrison County, RNAV (GPS) RWY 13, Orig-B
Cadiz, OH, Harrison County, RNAV (GPS) RWY 31, Orig-B
Medford, OR, Rogue Valley Intl—Medford, ILS OR LOC RWY 14, Amdt 3
Medford, OR, Rogue Valley Intl—Medford, RNAV (GPS) Y RWY 14, Amdt 2
Ogden, UT, Ogden-Hinckley, EMONT THREE, Graphic DP
Ogden, UT, Ogden-Hinckley, Takeoff Minimums and Obstacle DP, Amdt 2B
Highgate, VT, Franklin County State, RNAV (GPS) RWY 19, Amdt 1B
Green Bay, WI, Green Bay-Austin Straubel Intl, LOC BC RWY 24, Amdt 19C
Manitowoc, WI, Manitowoc County, ILS OR LOC RWY 17, Amdt 6
Manitowoc, WI, Manitowoc County, VOR/DME RWY 35, Amdt 1, CANCELED

Reedsburg, WI, Reedsburg Muni, RNAV (GPS) RWY 36, Orig-B

[FR Doc. 2019–02052 Filed 2–13–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31235; Amdt. No. 3837]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures (ODPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective February 14, 2019. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of February 14, 2019.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops-M30, 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001.
2. The FAA Air Traffic Organization Service Area in which the affected airport is located;
3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,
4. 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/code_of_federal_regulations/ibr_locations.html.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., Registry Bldg. 29, Room 104, Oklahoma City, OK 73125. Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or removes SIAPS, Takeoff Minimums and/or ODPS. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, their complex nature, and the need for a special format make publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs, Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure, and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPS, Takeoff Minimums and/or ODPS as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as Amended in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C 553(d), good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial

number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on January 25, 2019.

Rick Domingo,

Executive Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or removing Standard Instrument Approach Procedures and/or Takeoff Minimums and Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 28 February 2019

Anchorage, AK, Ted Stevens Anchorage Intl, RNAV (RNP) RWY 33, Amdt 1A
Burbank, CA, Bob Hope, ILS Y OR LOC Y RWY 8, Amdt 6A
Burbank, CA, Bob Hope, ILS Z OR LOC Z RWY 8, Amdt 39A
Burbank, CA, Bob Hope, RNAV (GPS)-A, Orig-A
Burbank, CA, Bob Hope, RNAV (GPS) Z RWY 8, Amdt 2A
Burbank, CA, Bob Hope, RNAV (RNP) Y RWY 8, Amdt 2A
Burbank, CA, Bob Hope, VOR RWY 8, Amdt 12A
Inyokern, CA, Inyokern, RNAV (GPS) RWY 2, Amdt 1
Inyokern, CA, Inyokern, RNAV (GPS) Z RWY 2, Orig-A, CANCELED
Los Banos, CA, Los Banos Muni, RNAV (GPS) RWY 14, Orig-C
Los Banos, CA, Los Banos Muni, RNAV (GPS) RWY 32, Amdt 1
Los Banos, CA, Los Banos Muni, VOR RWY 32, Amdt 5A
Tulare, CA, Mefford Field, RNAV (GPS) RWY 13, Amdt 1
Tulare, CA, Mefford Field, VOR RWY 13, Amdt 2
Wilmington, DE, New Castle, ILS OR LOC RWY 1, Amdt 24
Stuart, FL, Witham Field, RNAV (GPS) RWY 12, Amdt 2
Albia, IA, Albia Muni, RNAV (GPS) RWY 13, Orig-B
Storm Lake, IA, Storm Lake Muni, RNAV (GPS) RWY 35, Amdt 1B
Sandpoint, ID, Sandpoint, RNAV (GPS) Y RWY 20, Orig
Sandpoint, ID, Sandpoint, RNAV (GPS) Z RWY 20, Orig
St Francis, KS, Cheyenne County Muni, RNAV (GPS) RWY 14, Orig
Louisville, KY, Bowman Field, RNAV (GPS) RWY 33, Orig-B
Louisville, KY, Bowman Field, VOR RWY 24, Amdt 9A, CANCELED
Boyne City, MI, Boyne City Muni, RNAV (GPS) RWY 27, Orig-C
Fairmont, MN, Fairmont Muni, RNAV (GPS) RWY 31, Orig-A
Minneapolis, MN, Minneapolis-St Paul Intl/Wold-Chamberlain, LOC RWY 4, Amdt 2
Minneapolis, MN, Minneapolis-St Paul Intl/Wold-Chamberlain, RNAV (GPS) RWY 4, Amdt 3
Rochester, MN, Rochester Intl, ILS OR LOC RWY 13, Amdt 9
Rochester, MN, Rochester Intl, RNAV (GPS) RWY 2, Amdt 3B
Rochester, MN, Rochester Intl, RNAV (GPS) RWY 13, Amdt 1B
Rochester, MN, Rochester Intl, RNAV (GPS) RWY 20, Amdt 2B
Windom, MN, Windom Muni, RNAV (GPS) RWY 17, Amdt 1
Windom, MN, Windom Muni, RNAV (GPS) RWY 35, Amdt 1
Conrad, MT, Conrad, NDB OR GPS RWY 24, Amdt 4C, CANCELED
Conrad, MT, Conrad, RNAV (GPS) RWY 6, Orig
Conrad, MT, Conrad, RNAV (GPS) RWY 24, Orig
Conrad, MT, Conrad, Takeoff Minimums and Obstacle DP, Amdt 1
Jacksonville, NC, Albert J Ellis, NDB RWY 5, Amdt 8D
Valentine, NE, Miller Field, RNAV (GPS) RWY 14, Amdt 2A
Valentine, NE, Miller Field, RNAV (GPS) RWY 21, Orig-A
Valentine, NE, Miller Field, Takeoff Minimums and Obstacle DP, Amdt 3
Morristown, NJ, Morristown Muni, RNAV (GPS) RWY 5, Amdt 5
Sand Springs, OK, William R Pogue Muni, NDB RWY 35, Amdt 2F, CANCELED
Sand Springs, OK, William R Pogue Muni, RNAV (GPS) RWY 17, Orig-A
Sand Springs, OK, William R Pogue Muni, RNAV (GPS) RWY 35, Orig-A
Sand Springs, OK, William R Pogue Muni, VOR/DME–A, Amdt 3A, CANCELED
Tulsa, OK, Richard Lloyd Jones JR, ILS OR LOC RWY 1L, Amdt 3
Pittsburgh, PA, Pittsburgh Intl, ILS OR LOC RWY 28R, ILS RWY 28R SA CAT I, ILS RWY 28R SA CAT II, Amdt 10A
Shelbyville, TN, Bomar Field-Shelbyville Muni, VOR RWY 36, Amdt 17
College Station, TX, Easterwood Field, VOR OR TACAN RWY 11, Amdt 19E
Dallas, TX, McKinney National, ILS OR LOC RWY 18, Amdt 6
El Paso, TX, El Paso Intl, RNAV (GPS) RWY 26R, Amdt 1
San Angelo, TX, San Angelo Rgnl/Mathis Field, ILS Y OR LOC Y RWY 3, Amdt 22
San Angelo, TX, San Angelo Rgnl/Mathis Field, NDB RWY 3, Amdt 15
San Angelo, TX, San Angelo Rgnl/Mathis Field, RADAR 1, Amdt 1B
San Angelo, TX, San Angelo Rgnl/Mathis Field, RNAV (GPS) RWY 3, Amdt 2
San Angelo, TX, San Angelo Rgnl/Mathis Field, RNAV (GPS) RWY 18, Amdt 1
San Angelo, TX, San Angelo Rgnl/Mathis Field, RNAV (GPS) RWY 21, Amdt 2
Ogden, UT, Ogden-Hinckley, ILS OR LOC RWY 3, Amdt 5
Ogden, UT, Ogden-Hinckley, RNAV (GPS) RWY 3, Amdt 1
Ogden, UT, Ogden-Hinckley, RNAV (GPS) Y RWY 3, Orig-A, CANCELED
Port Angeles, WA, Port Angeles CGAS, COPTER NDB 242, Amdt 1A
Seattle, WA, Seattle-Tacoma Intl, ILS OR LOC RWY 16C, ILS RWY 16C SA CAT I, ILS RWY 16C CAT II, ILS RWY 16C CAT III, Amdt 17
Seattle, WA, Seattle-Tacoma Intl, ILS OR LOC RWY 16L, ILS RWY 16L SA CAT I, ILS RWY 16L CAT II, ILS RWY 16L CAT III, Amdt 8
Seattle, WA, Seattle-Tacoma Intl, ILS OR LOC RWY 16R, ILS RWY 16R SA CAT I, ILS RWY 16R CAT II, ILS RWY 16R CAT III, Amdt 5
Seattle, WA, Seattle-Tacoma Intl, ILS OR LOC RWY 34R, ILS RWY 34R SA CAT I, ILS RWY 34R SA CAT II, Amdt 3
Appleton, WI, Appleton Intl, ILS OR LOC RWY 30, Amdt 4
Wisconsin Rapids, WI, Alexander Field South Wood County, RNAV (GPS) RWY 20, Amdt 2

[FR Doc. 2019–02050 Filed 2–13–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31232; Amdt. No. 3834]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective February 14, 2019. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 14, 2019.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops–M30, 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001;
2. The FAA Air Traffic Organization Service Area in which the affected airport is located;
3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,
4. 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/code_of_federal_regulations/ibr_locations.html.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center online at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., Registry Bldg 29, Room 104, Oklahoma City, OK 73125. Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (NFDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained on FAA form documents is unnecessary.

This amendment provides the affected CFR sections, and specifies the SIAPs and Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPs, Takeoff Minimums and ODPs as identified in the amendatory language for part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP and Takeoff Minimums and ODP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP and Takeoff Minimums and ODP as modified by FDC permanent NOTAMs.

The SIAPs and Takeoff Minimums and ODPs, as modified by FDC permanent NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for these SIAP and Takeoff Minimums and ODP amendments require making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making these SIAPs effective in less than 30 days.

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

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on December 28, 2018.

Rick Domingo,

Executive Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal regulations, Part 97, (14 CFR part 97), is amended by amending Standard Instrument Approach Procedures and Takeoff Minimums and ODPs, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * *Effective Upon Publication*

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
31–Jan–19	AR	El Dorado	South Arkansas Rgnl At Goodwin Field.	8/0547	12/18/18	ILS OR LOC RWY 22, Amdt 2D.
31–Jan–19	TX	Alpine	Alpine-Casparis Muni.	8/1332	12/18/18	RNAV (GPS) RWY 19, Amdt 1.
31–Jan–19	MI	New Hudson	Oakland Southwest	8/1839	12/21/18	VOR OR GPS–A, Amdt 3B.
31–Jan–19	OH	Chillicothe	Ross County	8/3004	12/19/18	RNAV (GPS) RWY 23, Amdt 1A.
31–Jan–19	NC	Liberty	Causey	8/3182	12/14/18	RNAV (GPS) RWY 20, Orig.
31–Jan–19	NC	Liberty	Causey	8/3196	12/14/18	RNAV (GPS) RWY 2, Orig.
31–Jan–19	NC	Liberty	Causey	8/3216	12/14/18	VOR RWY 2, Amdt 5.
31–Jan–19	TN	Springfield	Springfield Robertson County.	8/4576	12/18/18	RNAV (GPS) RWY 4, Amdt 1A.
31–Jan–19	TN	Springfield	Springfield Robertson County.	8/4577	12/18/18	RNAV (GPS) RWY 22, Amdt 1A.
31–Jan–19	LA	Opelousas	St Landry Parish-Ahart Field.	8/6016	12/19/18	VOR/DME RWY 36, Amdt 1.
31–Jan–19	NC	Wilson	Wilson Industrial Air Center.	8/7170	12/18/18	RNAV (GPS) RWY 33, Orig-B.
31–Jan–19	NY	South Bethlehem	South Albany	8/8856	12/18/18	RNAV (GPS) RWY 1, Orig.
31–Jan–19	NY	South Bethlehem	South Albany	8/8857	12/18/18	RNAV (GPS) RWY 19, Orig.
31–Jan–19	KS	Newton	Newton-City-County	8/8975	12/14/18	VOR/DME–A, Amdt 3.

[FR Doc. 2019–02071 Filed 2–13–19; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 1

Adjustments to Civil Penalty Amounts

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') is implementing adjustments to the civil penalty amounts within its jurisdiction to account for inflation, as required by law.

DATES: Effective February 14, 2019.

FOR FURTHER INFORMATION CONTACT: Kenny A. Wright, Attorney (202–326–2907), Office of the General Counsel, FTC, 600 Pennsylvania Avenue NW, Washington, DC 20580, *kwright@ftc.gov*.

SUPPLEMENTARY INFORMATION: The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 [1] directs agencies to adjust the civil penalty maximums under their jurisdiction for inflation every January. Accordingly, the Commission issues annual adjustments to the maximum civil penalty amounts under its jurisdiction.[2]

Commission Rule 1.98 sets forth the applicable civil penalty amounts for violations of certain laws enforced by the Commission.[3] As directed by the FCPIAA, the Commission is issuing adjustments to increase these maximum civil penalty amounts to address inflation since its prior January 2018 adjustment. The following adjusted amounts will take effect on February 14, 2019:

- Section 7A(g)(1) of the Clayton Act, 15 U.S.C. 18a(g)(1) (premerger filing notification violations under the Hart-Scott-Rodino Improvements Act)—Increase from $41,484 to $42,530;
- Section 11(*l*) of the Clayton Act, 15 U.S.C. 21(*l*) (violations of cease and desist orders issued under Clayton Act section 11(b))—Increase from $22,039 to $22,595;
- Section 5(*l*) of the FTC Act, 15 U.S.C. 45(*l*) (unfair or deceptive acts or practices)—Increase from $41,484 to $42,530;
- Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. 45(m)(1)(A) (unfair or deceptive acts or practices)—Increase from $41,484 to $42,530;
- Section 5(m)(1)(B) of the FTC Act, 15 U.S.C. 45(m)(1)(B) (unfair or deceptive acts or practices)—Increase from $41,484 to $42,530;
- Section 10 of the FTC Act, 15 U.S.C. 50 (failure to file required reports)—Increase from $545 to $559;
- Section 5 of the Webb-Pomerene (Export Trade) Act, 15 U.S.C. 65 (failure by associations engaged solely in export trade to file required statements)—Increase from $545 to $559;
- Section 6(b) of the Wool Products Labeling Act, 15 U.S.C. 68d(b) (failure by wool manufacturers to maintain required records)—Increase from $545 to $559;
- Section 3(e) of the Fur Products Labeling Act, 15 U.S.C. 69a(e) (failure to maintain required records regarding fur products)—Increase from $545 to $559;
- Section 8(d)(2) of the Fur Products Labeling Act, 15 U.S.C. 69f(d)(2) (failure to maintain required records regarding fur products)—Increase from $545 to $559;
- Section 333(a) of the Energy Policy and Conservation Act, 42 U.S.C. 6303(a) (knowing violations of EPCA § 332, including labeling violations)—Increase from $449 to $460;
- Section 525(a) of the Energy Policy and Conservation Act, 42 U.S.C. 6395(a) (recycled oil labeling violations)—Increase from $22,039 to $22,595;
- Section 525(b) of the Energy Policy and Conservation Act, 42 U.S.C. 6395(b) (willful violations of recycled oil labeling requirements)—Increase from $41,484 to $42,530;
- Section 621(a)(2) of the Fair Credit Reporting Act, 15 U.S.C. 1681s(a)(2) (knowing violations of the Fair Credit Reporting Act)—Increase from $3,895 to $3,993;
- Section 1115(a) of the Medicare Prescription Drug Improvement and Modernization Act of 2003, Public Law 108–173, as amended by Public Law 115–263, 21 U.S.C. 355 note (failure to comply with filing requirements)—Increase from $14,666 to $15,036; and
- Section 814(a) of the Energy Independence and Security Act of 2007, 42 U.S.C. 17304 (violations of prohibitions on market manipulation and provision of false information to federal agencies)—Increase from $1,180,566 to $1,210,340.

Calculation of Inflation Adjustments

The FCPIAA, as amended, directs federal agencies to adjust each civil

[1] Public Law 114–74, § 701, 129 Stat. 599 (2015). The Act amends the Federal Civil Penalties Inflation Adjustment Act (''FCPIAA''), Public Law 101–410, 104 Stat. 890 (codified at 28 U.S.C. 2461 note).

[2] 81 FR 42476 (June 30, 2016); 82 FR 8135 (2017); 83 FR 2902 (2018).

[3] 16 CFR 1.98.

monetary penalty under their jurisdiction for inflation in January of each year pursuant to a cost-of-living adjustment.[4] The cost-of-living adjustment is based on the percent change between the U.S. Department of Labor's Consumer Price Index for all-urban consumers (''CPI–U'') for the month of October preceding the date of the adjustment, and the CPI–U for October of the prior year.[5] Based on that formula, the cost-of-living adjustment multiplier for 2019 is 1.02522. The FCPIAA also directs that these penalty level adjustments should be rounded to the nearest dollar. Agencies do not have discretion over whether to adjust a maximum civil penalty, or the method used to determine the adjustment.

The following chart illustrates the application of these adjustments to the civil monetary penalties under the Commission's jurisdiction.

CALCULATON OF ADJUSTMENTS TO MAXIMUM CIVIL MONETARY PENALTIES

Citation	Description	Current penalty (2018)	Adjustment multiplier	Adjusted penalty
16 CFR 1.98(a): 15 U.S.C. 18a(g)(1)	Premerger filing notification violations	$41,484	1.02522	$42,530
16 CFR 1.98(b): 15 U.S.C. 21(*l*)	Violations of cease and desist orders	22,039	1.02522	22,595
16 CFR 1.98(c): 15 U.S.C. 45(*l*)	Unfair or deceptive acts or practices	41,484	1.02522	42,530
16 CFR 1.98(d): 15 U.S.C. 45(m)(1)(A)	Unfair or deceptive acts or practices	41,484	1.02522	42,530
16 CFR 1.98(e): 15 U.S.C. 45(m)(1)(B)	Unfair or deceptive acts or practices	41,484	1.02522	42,530
16 CFR 1.98(f): 15 U.S.C. 50	Failure to file required reports	545	1.02522	559
16 CFR 1.98(g): 15 U.S.C. 65	Failure to file required statements	545	1.02522	559
16 CFR 1.98(h): 15 U.S.C. 68d(b)	Failure to maintain required records	545	1.02522	559
16 CFR 1.98(i): 15 U.S.C. 69a(e)	Failure to maintain required records	545	1.02522	559
16 CFR 1.98(j): 15 U.S.C. 69f(d)(2)	Failure to maintain required records	545	1.02522	559
16 CFR 1.98(k): 42 U.S.C. 6303(a)	Knowing violations	449	1.02522	460
16 CFR 1.98(*l*): 42 U.S.C. 6395(a)	Recycled oil labeling violations	22,039	1.02522	22,595
16 CFR 1.98(*l*): 42 U.S.C. 6395(b)	Willful violations	41,484	1.02522	42,530
16 CFR 1.98(m): 15 U.S.C. 1681s(a)(2)	Knowing violations	3,895	1.02522	3,993
16 CFR 1.98(n): 21 U.S.C. 355 note	Non-compliance with filing requirements	14,666	1.02522	15,036
16 CFR 1.98(o): 42 U.S.C. 17304	Market manipulation or provision of false information to federal agencies.	1,180,566	1.02522	1,210,340

Effective Dates of New Penalties

These new penalty levels apply to civil penalties assessed after the effective date of the applicable adjustment, including civil penalties whose associated violation predated the effective date.[6] These adjustments do not retrospectively change previously assessed or enforced civil penalties that the FTC is actively collecting or has collected.

Procedural Requirements

The FCPIAA, as amended, directs agencies to adjust civil monetary penalties through rulemaking and to publish the required inflation adjustments in the **Federal Register**, notwithstanding section 553 of title 5, United States Code. Pursuant to this congressional mandate, prior public notice and comment under the APA and a delayed effective date are not required. For this reason, the requirements of the Regulatory Flexibility Act (''RFA'') also do not apply.[7] Further, this rule does not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1995 as amended. 44 U.S.C. 3501 *et seq.*

List of Subjects for 16 CFR Part 1

Administrative practice and procedure, Penalties, Trade practices.

Text of Amendments

For the reasons set forth in the preamble, the Federal Trade Commission amends title 16, chapter I, subchapter A, of the Code of Federal Regulations, as follows:

PART 1—GENERAL PROCEDURES

■ 1. The authority citation for subpart L continues to read as follows:

Authority: 28 U.S.C. 2461 note.

■ 2. Revise § 1.98 to read as follows:

§ 1.98 Adjustment of civil monetary penalty amounts.

This section makes inflation adjustments in the dollar amounts of civil monetary penalties provided by law within the Commission's jurisdiction. The following maximum civil penalty amounts apply only to penalties assessed after February 14, 2019, including those penalties whose associated violation predated February 14, 2019.

(a) Section 7A(g)(1) of the Clayton Act, 15 U.S.C. 18a(g)(1)—$42,530;

(b) Section 11(*l*) of the Clayton Act, 15 U.S.C. 21(*l*)—$22,595;

(c) Section 5(*l*) of the FTC Act, 15 U.S.C. 45(*l*)—$42,530;

(d) Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. 45(m)(1)(A)—$42,530;

(e) Section 5(m)(1)(B) of the FTC Act, 15 U.S.C. 45(m)(1)(B)—$42,530;

(f) Section 10 of the FTC Act, 15 U.S.C. 50—$559;

(g) Section 5 of the Webb-Pomerene (Export Trade) Act, 15 U.S.C. 65—$559;

(h) Section 6(b) of the Wool Products Labeling Act, 15 U.S.C. 68d(b)—$559;

(i) Section 3(e) of the Fur Products Labeling Act, 15 U.S.C. 69a(e)—$559;

(j) Section 8(d)(2) of the Fur Products Labeling Act, 15 U.S.C. 69f(d)(2)—$559;

(k) Section 333(a) of the Energy Policy and Conservation Act, 42 U.S.C. 6303(a)—$460;

(l) Sections 525(a) and (b) of the Energy Policy and Conservation Act, 42 U.S.C. 6395(a) and (b), respectively—$22,595 and $42,530, respectively;

(m) Section 621(a)(2) of the Fair Credit Reporting Act, 15 U.S.C. 1681s(a)(2)—$3,993;

(n) Section 1115(a) of the Medicare Prescription Drug Improvement and Modernization Act of 2003, Public Law 108–173, as amended by Public Law 115–263, 21 U.S.C. 355 note—$15,036;

[4] 28 U.S.C. 2461 note (4).

[5] *Id.* (3), (5)(b); Office of Management and Budget, Memorandum M–19–04, *Implementation of Penalty Inflation Adjustments for 2019, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015* (December 14, 2018), available at: *https://www.whitehouse.gov/wp-content/uploads/2017/11/m_19_04.pdf.*

[6] 28 U.S.C. 2461 note (6).

[7] A regulatory flexibility analysis under the RFA is required only when an agency must publish a notice of proposed rulemaking for comment. *See* 5 U.S.C. 603.

(o) Section 814(a) of the Energy Independence and Security Act of 2007, 42 U.S.C. 17304—$1,210,340; and

(p) Civil monetary penalties authorized by reference to the Federal Trade Commission Act under any other provision of law within the jurisdiction of the Commission—refer to the amounts set forth in paragraphs (c), (d), (e) and (f) of this section, as applicable.

By direction of the Commission.

April J. Tabor,

Acting Secretary.

[FR Doc. 2019–02237 Filed 2–13–19; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 385

[Docket No. RM19–8–000; Order No. 854]

Computation of Time During Emergencies

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission or Agency) is amending its Rules of Practice and Procedure to update its provisions regarding the computation of time. This final rule will modify the Commission's regulations to cover situations in which the Commission is closed due to adverse conditions—including inclement weather—even though some official duties may continue through telework-ready employees. This change will prevent unintended Commission action by operation of law and will provide clarity as to filing deadlines and deadlines for action by the Commission.

DATES: The rule will become effective February 14, 2019.

FOR FURTHER INFORMATION CONTACT: Mark Hershfield, Office of the General Counsel, 888 First Street NE, Washington, DC 20426, (202) 502–8597, *mark.hershfield@ferc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

1. By this final rule, the Federal Energy Regulatory Commission (Commission or agency) is amending 18 CFR 385.2007 (Rule 2007) to cover the computation of time in situations in which the Commission is closed due to adverse conditions—including inclement weather—even though some official duties may be performed by telework-ready employees. This rule prevents unintended Commission action by operation of law and provides clarity as to filing deadlines and deadlines for action by the Commission. The rule imposes no new obligations on the public and is consistent with prior procedure for computing time.

II. Background

2. The Commission's regulations address computing periods of time prescribed or allowed by statute or Commission rule or order. For many years, under Rule 2007, the last day of a time period is not counted if that day is a Saturday, Sunday, ''part-day holiday that affects the Commission, or legal public holiday.'' [1] In December 2003, the Commission issued *Emergency Closures,*[2] which added a provision to Rule 2007 to address the computation of time during closure of the Commission due to weather or other adverse conditions.

3. On April 10, 2018, the Office of Personnel Management (OPM) issued its final regulation implementing the weather and safety leave provisions of the Administrative Leave Act of 2016.[3] Under OPM's regulations, Agencies may only grant weather and safety leave when it is determined that, because of severe weather or another emergency situation, employees cannot safely travel to or from, or perform work at, their normal worksite, a telework site, or other approved location.[4] OPM's regulations further require that employees that are telework-ready continue to perform official duties, even though Federal offices are closed due to severe weather or another emergency situation.[5]

III. Discussion

4. The timeframes for certain Commission action, including actions on certain rate proposals filed by natural gas pipeline companies, oil pipeline companies, and public utilities, are set by statute.[6] Although the Commission does not have the authority to change such statutory deadlines, the Commission has the authority to determine how such deadlines are computed.[7] For example, as noted above, under Rule 2007, the last day of a time period is not counted if that day is a Saturday, Sunday, part-day holiday that affects the Commission, legal public holiday, or a day on which the Commission closes due to adverse conditions and does not reopen prior to its official close of business.[8]

The Commission is amending Rule 2007 to implement the weather and safety leave provisions of the Administrative Leave Act of 2016 whereby the Commission is closed due to adverse conditions, including inclement weather or another emergency situation, even though telework ready employees may continue performing some official duties.

5. In such circumstances, employee and public access to the Commission's physical facilities may be restricted, not all employees may be telework-ready, and not all telework-ready employees may be able to telework due to the adverse conditions.[9] The Commission's ability to accept filings and issue orders thus may be affected when the Commission's facilities are closed due to adverse conditions. Likewise, when the Commission's facilities are closed due to adverse conditions, the public's ability to submit a filing on the last day on which a filing is due may also be restricted. As such, the same justification on which the Commission relied to implement Rule 2007, and later to amend Rule 2007 to address emergency circumstances, is equally applicable to instances in which the Commission is closed, but employees continue some official duties through telework.

6. Furthermore, 18 CFR 385.2007(a)(2) only addresses the ''last day of any time period,'' and this final rule only addresses the computation instances in which the Commission is closed on the last day of a time period. This final rule also does not change the computation of time in instances when the Commission is closed for part of the day, but reopens prior to the official close of business.

[1] 18 CFR 385.2007(a)(2) (2018) (Rule 2007).

[2] Order No. 645, 105 FERC ¶ 61,296 (2003).

[3] Public Law 114–328, 130 Stat. 2000 (December 23, 2016) (enacted under section 1138 of the National Defense Authorization Act for Fiscal Year 2017).

[4] *See* 5 CFR 630.1603, *et al.*

[5] *Id.* For example, due to inclement weather on January 14, 2019, OPM announced that ''FEDERAL OFFICES in the Washington, DC area are CLOSED. Emergency employees and telework employees continue to work.''

[6] *See, e.g.,* 16 U.S.C. 824d (2012) (Federal Power Act) (60 days); 15 U.S.C. 717c (2012) (Natural Gas Act) (30 days); 49 App. U.S.C. 6(3) (Interstate Commerce Act) (30 days).

[7] *See Emergency Closures,* Order No. 645, 105 FERC ¶ 61,296, at P. 2 (*citing Tennessee Gas Pipeline Co.,* 95 FERC ¶ 61,169 (Commission may not extend 30-day rehearing deadline, although it can provide rules for computing time)), *aff'd sub nom. Londonderry Neighborhood Coalition* v. *FERC,* 273 F.3d 416 (1st Cir. 2001).

[8] 18 CFR 385.2007 (2018).

[9] *See Governmentwide Dismissal and Closure Procedures,* Office of Personnel Management, December 2015, *https://www.opm.gov/policy-data-oversight/pay-leave/reference-materials/handbooks/dcdismissal.pdf.*

IV. Information Collection Statement

7. Office of Management and Budget (OMB) regulations require approval of certain information collection requirements imposed by agency rule.[10] This final rule does not contain any information collection requirements. Therefore, compliance with OMB regulations is not required.

V. Environmental Analysis

8. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[11] Issuance of this final rule does not represent a major federal action having a significant adverse effect on the human environment under the Commission's regulations implementing the National Environmental Policy Act of 1969. Part 380 of the Commission's regulations lists categorical exemptions to the requirement to draft an Environmental Analysis or Environmental Impact Statement. Included is an exemption for procedural, ministerial, or internal administrative actions.[12] This rulemaking is exempt under that provision.

VI. Regulatory Flexibility Act

9. The Regulatory Flexibility Act of 1980 (RFA)[13] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. This final rule concerns an interpretation of current Commission regulations and practices. The Commission certifies that it will not have a significant economic impact upon participants in Commission proceedings. An analysis under the RFA is not required.

VII. Document Availability

10. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE, Room 2A, Washington, DC 20426.

11. From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

12. User assistance is available for eLibrary and the Commission's website during normal business hours from FERC Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov*.

VIII. Effective Date

13. These regulations are effective immediately upon issuance. In accordance with 5 U.S.C. 553(d)(3), the Commission finds that good cause exists to make this final rule effective immediately. The final rule is intended to act as a contingency measure in order to preserve, rather than alter, the rights of persons appearing before the Commission. Therefore, there is no reason to make it effective at a later date. The provisions of 5 U.S.C. 801 regarding Congressional review of final rules do not apply to this final rule, because the rule concerns Agency procedure and practice and will not substantially affect the rights of non-Agency parties.

14. The Commission is issuing this rule as a final rule without a period for public comment. Under 5 U.S.C. 553(b)(3)(A), notice and comment procedures are unnecessary for ''rules of agency organization, procedure, or practice.'' This final rule is directed at improving the efficient and effective operations of the Commission, not toward a determination of the rights or interests of affected parties. The final rule will not significantly affect regulated entities or the general public.

List of Subjects in 18 CFR Part 385

Administrative practice and procedure, Electric power, Penalties, Pipelines, Reporting and recordkeeping requirements.

By the Commission.

Issued: February 8, 2019.

Kimberly D. Bose,

Secretary.

In consideration of the foregoing, the Commission amends part 385, chapter 2, title 18, *Code of Federal Regulations,* as follows:

PART 385—ADMINISTRATIVE PRACTICE AND PROCEDURE

■ 1. The authority citation for part 385 is revised to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717z, 3301–3432; 16 U.S.C. 791a–825r, 2601–2645; 28 U.S.C. 2461; 31 U.S.C. 3701, 9701; 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

■ 2. Section 385.2007(a)(2) is revised to read as follows:

§ 385.2007 Time (Rule 2007).

(a) * * *

(2) The last day of any time period is included in the time period, unless it is a Saturday; Sunday; a day on which the Commission closes due to adverse conditions and does not reopen prior to its official close of business, even though some official duties may continue through telework-ready employees; part-day holiday that affects the Commission; or legal public holiday as designated in section 6103 of title 5, U.S. Code. In each case the period does not end until the close of the Commission business of the next day which is not a Saturday; Sunday; a day on which the Commission closes due to adverse conditions and does not reopen prior to its official close of business even though some official duties may continue through telework-ready employees; part-day holiday that affects the Commission; or legal public holiday.

* * * * *

[FR Doc. 2019–02343 Filed 2–13–19; 8:45 am]

BILLING CODE 6717–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4022

Benefits Payable in Terminated Single-Employer Plans; Interest Assumptions for Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's regulation on Benefits Payable in Terminated Single-Employer Plans to prescribe certain interest assumptions under the regulation for plans with valuation dates in March 2019. These interest assumptions are used for paying certain benefits under terminating single-employer plans covered by the pension insurance system administered by PBGC.

DATES: Effective March 1, 2019.

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[10] 5 CFR part 1320 (2018).

[11] *Regulations Implementing the National Environmental Policy Act,* Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987).

[12] 18 CFR 380.4(a)(5) (2018).

[13] 5 U.S.C. 601–12 (2012).

FOR FURTHER INFORMATION CONTACT: Melissa Rifkin (*rifkin.melissa@PBGC.gov*), Attorney, Regulatory Affairs Division, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005, 202–326–4400 ext. 6563. (TTY users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4400, ext. 6563.)

SUPPLEMENTARY INFORMATION: PBGC's regulation on Benefits Payable in Terminated Single-Employer Plans (29 CFR part 4022) prescribes actuarial assumptions—including interest assumptions—for paying plan benefits under terminated single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974 (ERISA). The interest assumptions in the regulation are also published on PBGC's website (*http://www.pbgc.gov*).

PBGC uses the interest assumptions in appendix B to part 4022 (''Lump Sum Interest Rates for PBGC Payments'') to determine whether a benefit is payable as a lump sum and to determine the amount to pay. Because some private-sector pension plans use these interest rates to determine lump sum amounts payable to plan participants (if the resulting lump sum is larger than the amount required under section 417(e)(3) of the Internal Revenue Code and section 205(g)(3) of ERISA), these rates are also provided in appendix C to part 4022 (''Lump Sum Interest Rates for Private-Sector Payments'').

This final rule updates appendices B and C of the benefits payment regulation to provide the rates for March 2019 measurement dates.

The March 2019 lump sum interest assumptions will be 1.25 percent for the period during which a benefit is (or is assumed to be) in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. In comparison with the interest assumptions in effect for February 2019, these assumptions represent no change in the immediate rate and are otherwise unchanged.

PBGC updates appendices B and C each month. PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to issue new interest assumptions promptly so that they are available for plans that rely on our publication of them each month to calculate lump sum benefit amounts.

Because of the need to provide immediate guidance for the payment of benefits under plans with valuation dates during March 2019, PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

In consideration of the foregoing, 29 CFR part 4022 is amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 2. In appendix B to part 4022, Rate Set 305 is added at the end of the table to read as follows:

Appendix B to Part 4022—Lump Sum Interest Rates for PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*	*		*
305	3–1–19	4–1–19	1.25	4.00	4.00	4.00	7	8

■ 3. In appendix C to part 4022, Rate Set 305 is added at the end of the table to read as follows:

Appendix C to Part 4022—Lump Sum Interest Rates for Private-Sector Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*	*		*
305	3–1–19	4–1–19	1.25	4.00	4.00	4.00	7	8

Issued in Washington, DC.

Hilary Duke,

Assistant General Counsel for Regulatory Affairs, Pension Benefit Guaranty Corporation.

[FR Doc. 2019–02156 Filed 2–13–19; 8:45 am]

BILLING CODE 7709–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA–R01–OAR–2018–0849; FRL–9989–00–Region 1]

Notice of Delegation of Authority; Connecticut; New Source Performance Standards for Stationary Combustion Turbines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of authority.

SUMMARY: On December 13, 2018, the Environmental Protection Agency (EPA) sent the State of Connecticut a letter approving Connecticut's request for delegation of the New Source Performance Standards for Stationary Combustion Turbines. To inform regulated facilities and the public of the EPA's approval of Connecticut's request for delegation of authority to implement and enforce these standards, the EPA is making available a copy of EPA's letter to Connecticut through this document.

DATES: On December 13, 2018, the EPA sent the State of Connecticut a letter approving Connecticut's request for delegation of the New Source Performance Standards for Stationary Combustion Turbines.

ADDRESSES: The EPA has established a docket for this action under Docket Identification No. EPA–R01–OAR–2018–0849. 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: Eric Wortman, Air Permits, Toxics, and Indoor Programs Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA Region 1, 5 Post Office Square (OEP05–2), Boston, MA 02109–3912, telephone number (617) 918–1624, fax number (617) 918–0624, email *wortman.eric@epa.gov*.

SUPPLEMENTARY INFORMATION: In a letter dated November 8, 2018, the Connecticut Department of Energy and Environmental Protection (CT DEEP) requested full delegation to implement and enforce the New Source Performance Standards for Stationary Combustion Turbines at 40 CFR part 60, subpart KKKK (NSPS KKKK) for all affected sources in Connecticut. On December 13, 2018, the EPA sent CT DEEP a letter approving the request for delegation to implement and enforce NSPS KKKK as specified by CT DEEP in its request to the EPA. The text of the EPA's December 13, 2018 letter to CT DEEP is reproduced below:

Robert Kaliszewski, Deputy Commissioner
Department of Energy and Environmental Protection
79 Elm Street
Hartford, CT 06106–5127

Dear Deputy Commissioner Kaliszewski:

In your letter dated November 8, 2018, the Connecticut Department of Energy and Environmental Protection (CT DEEP) requested full delegation to implement and enforce the New Source Performance Standards for Stationary Combustion Turbines at 40 CFR part 60, subpart KKKK (NSPS KKKK) for all affected sources in Connecticut.

The EPA has reviewed the pertinent regulations of the State of Connecticut and has determined they provide adequate authority and procedures for implementation of NSPS KKKK. In light of these authorities and related information in your letter dated November 8, 2018, the EPA approves your request for full delegation of authority to implement and enforce the provisions of NSPS KKKK.

This delegation of authority is subject to the following terms and conditions:

- CT DEEP will assume primary responsibility for enforcement of NSPS KKKK;
- CT DEEP will not grant a variance or waiver from compliance with applicable emission standards of NSPS KKKK;
- CT DEEP will communicate with EPA Region 1 to keep each office fully informed regarding the current compliance status of subject sources in Connecticut and interpretation of applicable regulations;
- CT DEEP will require all NSPS KKKK sources to adhere to all the reporting, monitoring, and recordkeeping requirements specified in NSPS KKKK;
- CT DEEP will notify the EPA of any variation from emission test methods and continuous emission monitoring requirements specified in NSPS KKKK. Written approval from the EPA must be obtained by CT DEEP prior to the granting or the implementation of such variations; and
- If the Regional Administrator determines that CT DEEP is not adequately implementing or enforcing NSPS KKKK, the Regional Administrator may revoke delegation of NSPS KKKK in whole or part.

Because this delegation is effective immediately, there is no need for CT DEEP to notify the EPA of its acceptance. Unless the EPA receives written notice of objection from CT DEEP within ten days from the date of this letter, CT DEEP will be deemed to have accepted all of the terms as stated herein. The EPA will publish a notice of delegation of authority in the **Federal Register** informing the public of this action.

The EPA appreciates CT DEEP's efforts to accept delegation to implement and enforce the provisions of NSPS KKKK. If you have any questions regarding this matter, please don't hesitate to contact Eric Wortman at (617) 918–1624.

Sincerely,

Alexandra Dapolito Dunn,
Regional Administrator

This document informs regulated facilities and the public of the EPA's approval of Connecticut's request for delegation of authority to implement and enforce NSPS KKKK. The delegation of authority was effective on December 13, 2018.

List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and record keeping requirements.

Authority: This action is issued under the authority of section 111 of the Clean Air Act, as amended, 42 U.S.C. 7412.

Dated: February 7, 2019.

Deborah Szaro,

Acting Regional Administrator, EPA Region 1.

[FR Doc. 2019–02202 Filed 2–13–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2015–0699; FRL–9989–48–Region 5]

Air Plan Approval; Ohio; Attainment Plan for the Lake County SO_2 Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving, under the Clean Air Act (CAA), Ohio's plan for attaining the 1-hour sulfur dioxide (SO_2) primary national ambient air quality standard (NAAQS) in the Lake County SO_2 nonattainment area. EPA proposed to approve Ohio's Lake County plan as a revision to Ohio's SO_2 State Implementation Plan (SIP) on August 21, 2018. EPA received public comments on the proposed rulemaking and is providing responses to the comments below.

DATES: This final rule is effective on March 18, 2019.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2015–0699. 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 Mary Portanova, Environmental Engineer, at (312) 353–5954 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Mary Portanova, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–5954, *portanova.mary@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. Ohio's nonattainment SIP submittal of April 3, 2015, supplemented on October 13, 2015 and on March 13, 2017, addressed Ohio's Lake County, Muskingum River, and Steubenville OH–WV SO_2 nonattainment areas. This final action addresses only the Lake County portion of Ohio's nonattainment SIP submittal. The Muskingum River and Steubenville portions of Ohio's submittal will be addressed in future action.

This **SUPPLEMENTARY INFORMATION** section is arranged as follows:

I. Background
II. Public Comments and EPA Responses
III. What action is EPA taking?
IV. Statutory and Executive Order Reviews

I. Background

Lake County, Ohio, was designated nonattainment for the 2010 1-hour primary SO_2 NAAQS on August 5, 2013 (78 FR 47191). As required by the CAA, Ohio developed a plan to provide for attainment of the SO_2 NAAQS in Lake County. Ohio submitted its plan to EPA on April 3, 2015 and supplemented it on October 13, 2015, and on March 13, 2017. On August 21, 2018 (83 FR 42235), EPA proposed to find that Ohio appropriately demonstrated that its plan will provide for attainment of the SO_2 NAAQS in Lake County by the applicable attainment date and that the plan meets the other applicable requirements of the CAA.

II. Public Comments and EPA Responses

The comment period on EPA's August 21, 2018 notice of proposed rulemaking (NPRM) closed on September 20, 2018. EPA received one adverse public comment from the Sierra Club and one public comment which was not relevant to the proposed action. The adverse comment and EPA's response are described below. In the following discussion, EPA will refer to the Sierra Club as ''the commenter.'' ''The Painesville plant'' refers to the Painesville Municipal Electric Plant in Lake County. The ''April 2014 guidance'' refers to EPA's April 23, 2014 recommended guidance for meeting the statutory requirements in SO_2 nonattainment area SIPs, entitled, ''Guidance for 1-Hour SO_2 Nonattainment Area SIP Submissions,'' available at *https://www.epa.gov/sites/production/files/2016-06/documents/20140423guidance_nonattainment_sip.pdf*.

Comment: The commenter stated that short-term exposure to SO_2 for as little as five minutes has significant health impacts, and that EPA changed the SO_2 NAAQS to a shorter-term form to address these health impacts. The commenter said that emission limits with an averaging period longer than one hour are highly unlikely to be able to protect the 1-hour NAAQS. The commenter said that EPA cannot rely on a 30-day emission limit for the Painesville plant to assure compliance with a 1-hour air quality standard. The commenter believes that EPA should not approve Ohio's nonattainment plan until Ohio develops a 1-hour emission limit for the Painesville plant that protects public health.

EPA Response: The health effects information provided by the commenter, which was addressed in EPA's promulgation of the 2010 SO_2 NAAQS, is not in dispute in this rulemaking. This rulemaking instead addresses whether Ohio's plan is adequate to meet the NAAQS.

EPA disagrees with the commenter's statement that emission limits with an averaging period longer than one hour are highly unlikely to be able to protect the 1-hour NAAQS. EPA believes as a general matter that properly set longer term average limits are comparably effective in providing for attainment of the 1-hour SO_2 standard as 1-hour limits. EPA provided a more complete rationale for this belief in the August 21, 2018 NPRM for the Lake County SO_2 SIP, including a summary of analyses described in EPA's guidance that support a conclusion that the distribution of emissions that can be expected in compliance with a properly set longer term average limit is likely to yield better overall air quality than constant hourly emissions set at a level that provides for attainment. EPA found that a longer term average limit which is comparably stringent to a short-term average limit is likely to yield comparable air quality; and that the net effect of allowing emissions variability over time but requiring a lower average emission level is that the resulting worst-case air quality is likely to be comparable to or better than the worst-case air quality resulting from the corresponding higher emission limit without variability.

It is useful here to distinguish between exceedances and violations. The term ''exceedance,'' or ''exceedance of the level of the NAAQS,'' is used to mean a single occasion on which the ambient SO_2 concentration exceeds 75 parts per billion (ppb). The term ''violation,'' in contrast, means that a sufficient number and magnitude of exceedances has occurred to violate the NAAQS, *i.e.,* that the 3-year average of the 99th percentile daily maximum 1-

hour SO_2 concentrations is above 75 ppb.

Any accounting of whether a 30-day average limit provides for attainment must consider factors that reduce the likelihood of exceedances of the NAAQS level as well as factors that create risk of additional exceedances. To facilitate this analysis, EPA used the concept of a critical emission value (CEV) for the SO_2-emitting facilities which are being addressed in a nonattainment SIP. The CEV is the continuous 1-hour emission rate which is expected to provide for the average annual 99th percentile maximum daily 1-hour concentration to be at or below 75 ppb, which in a typical year means that fewer than four days have maximum hourly ambient SO_2 concentrations exceeding 75 ppb.

EPA recognizes that a 30-day limit can allow occasions in which emissions exceed the CEV, and such occasions yield the possibility of exceedances of the NAAQS level occurring that would not be expected if emissions were always at the CEV. At the same time, the establishment of the 30-day limit below the CEV means that emissions must routinely be lower than they would be required to be with a 1-hour emission limit at the CEV. On those critical modeled days in which emissions at the CEV are expected to result in concentrations exceeding 75 ppb, emissions below the CEV may well result in concentrations below 75 ppb.

Requiring emissions on average to be below the CEV introduces significant chances that emissions will be below the CEV on critical days, so that such a requirement creates significant chances that air quality would be better than 75 ppb on days that, with emissions at the CEV, would have exceeded 75 ppb.

The August 21, 2018 NPRM provides an illustrative example of the effect that application of a limit with an averaging time longer than 1 hour can have on air quality. This example illustrates both: (1) The possibility of elevated emissions (emissions above the CEV) causing exceedances of the NAAQS level not expected with emissions at or below the CEV and (2) the possibility that the requirement for routinely lower emissions would result in avoiding exceedances of the NAAQS level that would be expected with emissions at the CEV. In this example, moving from a 1-hour limit to a 30-day average limit results in one day that exceeds 75 ppb that would otherwise be below 75 ppb, one day that is below 75 ppb that would otherwise be above 75 ppb, and one day that is below 75 ppb that would otherwise be at 75 ppb. In net, the 99th percentile of the 30-day average limit scenario is lower than that of the 1-hour limit scenario, with a design value of 67.5 ppb rather than 75 ppb. Stated more generally, this example illustrates several points: (1) The variations in emissions that are accounted for with a longer term average limit can yield higher concentrations on some days and lower concentrations on other days, as determined by the factors influencing dispersion on each day, (2) one must account for both possibilities, and (3) accounting for both effects can yield the conclusion that a properly set longer term average limit can provide as good or better air quality than allowing constant emissions at a higher level.

The commenter does not address EPA's full rationale for concluding that properly set 30-day average limits are a suitable basis for providing for attainment of the 1-hour SO_2 standard. Instead, the commenter merely notes the possibility that air quality could be worse with a 30-day average limit than with a 1-hour limit because the longer-term limit appears to allow emissions to exceed the level of an acceptable 1-hour limit. The commenter makes no acknowledgement of the possibility that a properly adjusted 30-day average limit can avoid some exceedances of the NAAQS level that would be expected to occur with emissions allowed always to be at the CEV. Consequently, the commenter does not acknowledge or address the occasions in which the longer-term limit requires better air quality, which is a key element of EPA's rationale for concluding that the net effect of limiting longer term average emissions to a downward adjusted level can be comparably effective in providing for attainment as limiting 1-hour emissions to the level of the CEV.

EPA does not agree that in all cases it must disapprove plans which use longer-term limits, and instead require 1-hour emission limits. After reviewing Ohio's submittal, EPA finds that the limits established for the Painesville plant provide a suitable alternative to establishing 1-hour average emission limits for this source. Ohio's limits for the Painesville plant were developed in accordance with EPA's April 2014 guidance, with an appropriate downward adjustment from the CEV found in Ohio's modeling analysis. EPA is satisfied that the Painesville plant's 30-day emission limits are therefore comparable in stringency to the 1-hour CEV. The Painesville plant's boilers are also subject to a requirement for a reduction in coal sulfur content, a separate 24-hour cap on their total operating rate, and an additional restriction to ten percent of their annual capacity in accordance with the Limited Use definition in the Boiler MACT [1] rule.

In addition, the 2015 closure of the FirstEnergy Generation, LLC, Eastlake Plant has provided additional SO_2 emission reductions which were not credited in the Lake County modeling analysis. These reductions help supplement the effectiveness of Ohio's planned reductions at the Painesville plant to bring Lake County into attainment of the 2010 SO_2 NAAQS and maintain the standards in future.

EPA believes that Ohio's Lake County nonattainment plan as a whole is sufficient to protect and maintain the 2010 SO_2 NAAQS.

Comment: The commenter asserts that the limits are ''not comparable in stringency to the hourly emission rates modeled by Ohio in its attainment demonstration.''

EPA Response: The commenter does not dispute EPA's rationale for concluding that Ohio's 30-day average limits for the Painesville plant are comparably stringent to 1-hour limits at the level Ohio modeled, nor does the commenter provide a basis for its assertion that Ohio's limits are not comparably stringent. EPA's guidance provides a recommended approach for determining the ratio between 30-day average levels and 1-hour levels, determined at the 99th percentile level, which yields an adjustment factor that seeks to quantify the effect of using the longer averaging time on the stringency of the limit and thus presumptively expresses the degree of adjustment to be applied to a 1-hour emission limit to determine a comparably stringent 30-day average limit.

EPA concurred with Ohio's decision to apply the national average of such adjustment factors, as given in Appendix D of EPA's April 2014 guidance. In absence of a rationale for changing its views, EPA continues to believe that the 30-day average limits adopted by Ohio are comparably stringent to 1-hour limits at the level Ohio modeled.

Comment: The commenter said that air quality conditions can be rendered unsafe by as few as four hours of elevated emissions over the course of the year, making an emission limit with an averaging period of longer than one hour unlikely to be able to protect this short-term standard. The commenter argued that spikes in emissions from the Painesville plant could cause short-term

[1] Information about the boiler MACT is available at *https://www.epa.gov/stationary-sources-air pollution/industrial-commercial-and-institutional-boilers-and-process-heaters.*

elevations in ambient SO_2 levels sufficient to violate the NAAQS while nonetheless averaging out over longer periods such that the 30-day average permit limit is ''complied'' with.

EPA Response: Again, proper accounting of the air quality consequences of applying a 30-day average limit cannot be limited to consideration of the possibility of additional exceedances of 75 ppb on days with emissions above the CEV; one must additionally consider the likelihood of effects in the other direction, *i.e.,* that requiring lower emissions on average (and on most occasions) might result in avoiding exceedances of the NAAQS level that would occur with emissions at the CEV. As discussed above, the NPRM provides an example that illustrates this principle.

In addition, for several reasons, EPA disagrees with the commenter's implication that any short-term occasion of elevated emissions (*e.g.,* emissions above the CEV) creates an unacceptable risk of additional exceedances of the NAAQS level that would result in actual violation of the standard. First, the occurrence of an hour with emissions above the CEV is unlikely on its own to lead to a concentration above the level of the NAAQS. The CEV is identified as an emission level which will protect against NAAQS violations, considering the full range of local meteorological conditions. The analyses which identify the CEV show that ambient air concentrations would be well below exceedance levels in much of the modeling domain, and for most hours. Episodes of elevated emissions cause significantly elevated concentrations only on a limited number of days per year when meteorological conditions favor high concentrations. As a result, any single episode of elevated emissions cannot be assumed to cause an exceedance of 75 ppb, and in fact the risk of such an event, while nonzero, is quite low. Furthermore, even if multiple occurrences of elevated emissions do occur at times with meteorology conducive to high concentrations, these occasions are likely to involve different wind directions, resulting in the elevated concentrations occurring at different locations. Therefore, from the perspective that air quality is evaluated at individual locations, and a violation occurs only if any single location observes an excessive net number of exceedances, it is especially unlikely that isolated occurrences of elevated emissions (particularly in a scenario with emissions on most occasions being well below the CEV) would result in violations at any location.

Second, EPA disagrees with the apparent view that any risk of an event in which elevated emissions causes otherwise unexpected exceedances of 75 ppb is an unacceptable risk. While use of a limit based on a long-term average increases the risk of elevated concentrations on a small number of days, the establishment of the limit at a reduced level means that most days will have a reduced risk of elevated concentrations. Since the pertinent question is whether Ohio's plan provides for attainment, EPA must address the net effect of applying a long-term average, not just considering those factors that increase the likelihood of exceedances of 75 ppb or just considering those factors that reduce the likelihood of such exceedances.

Examining the net probabilities of elevated emissions occurring simultaneously with meteorology conducive to exceedances, and of reduced emissions occurring on occasions that would have experienced exceedances of the standard without that emission reduction, suggests that the net effects cannot be assessed without a complicated analysis. A more useful framework for considering these questions is to focus, for any particular location, on those hours where the meteorology is conducive to having high concentrations at that location. Consider, for example, the likely magnitude of emissions during the pertinent hours for a source that is complying with a long-term limit that reflects a 30 percent downward adjustment. During the pertinent hours, the source is quite unlikely to be emitting more than the CEV (a probability on the order of 1 percent) and is much more likely to be emitting at or below 30 percent below the CEV. This perspective better frames the question of the net effect of having variable emissions occasionally exceeding the CEV but requiring emissions to average well below the CEV as compared to allowing emissions always to be at the CEV.

EPA believes that if emissions at critical times are suitably unlikely to exceed the CEV and are suitably likely to be well below the CEV, the net effect is to provide adequately for attainment. As discussed in the NPRM, EPA has conducted analyses to evaluate the extent to which longer-term average limits with comparable stringency to 1-hour limits at the critical emission value can provide for attainment. EPA finds that a comparably stringent limit provides a sufficient constraint on the frequency and magnitude of occurrences of elevated emissions such that this control strategy will reasonably provide for attainment.

As stated in appendix B of EPA's April 2014 guidance, the Agency acknowledges that even with an adjustment to provide comparable stringency, a source complying with a longer-term average emission limit could possibly have hourly emissions which occasionally exceed the critical emission value. In order to assure that SO_2 emission sources will maintain the NAAQS while using longer-term average limits, EPA's guidance recommends that 30-day average SO_2 limits be set at a level below the level that would be expected to be protective of the SO_2 NAAQS as a 1-hour SO_2 limit. A facility in compliance with the 30-day limit could therefore have occasional spikes of higher concentration, but the majority of its hourly impacts must be as low as or lower than those of a source which is limited at the critical emission value level. As was stated in the NPRM, EPA's statistical analyses of SO_2 emissions data showed that a comparably stringent 30-day average limit is likely to result in fewer exceedances and better air quality than would occur with 1-hour emissions at the critical emission value.

Comment: The commenter said that past EPA SO_2 policy (1994) definitively stated that ''EPA will not approve an SO_2 SIP with emission limitations based on 30-day average, unless the SIP also contains short-term limits established by an approved dispersion modeling analysis.'' The commenter also cited past actions, including a 1986 memorandum regarding a specific proposed facility, in which EPA determined that compliance with a 30-day rolling average emission limit under NSPS Subpart Da does not adequately demonstrate compliance with short-term NAAQS and PSD increments, regardless of sulfur variability.

EPA Response: In this action, EPA is not changing its position regarding the 1-hour emissions limitations to which other facilities, as cited by the commenter, are subject. However, the examples that the commenter cites predate the release of EPA's April 2014 guidance. They reflect EPA's policy for implementing the NAAQS before EPA addressed the question of whether it might be possible to devise an effective attainment plan using an emission limit with an averaging period longer than that of the NAAQS, given appropriate adjustments to make the limit comparably stringent to a short-term emission rate that would ensure attainment of the SO_2 NAAQS. EPA developed the April 2014 guidance after a lengthy stakeholder outreach process

regarding implementation strategies for the 2010 SO_2 NAAQS. As the April 2014 guidance was the first instance in which the Agency provided direct guidance for considering adjusted long-term average limits for a short-term standard, EPA does not consider the earlier documents to countermand the April 2014 guidance on this issue.

EPA's April 2014 guidance acknowledges that EPA had previously recommended that averaging times in SIP emission limits should not exceed the averaging time of the applicable NAAQS. However, the April 2014 guidance expresses EPA's finding that control strategies involving limits with averaging times of up to 30 days can provide for attainment of the 2010 SO_2 NAAQS, where the limits have been set at levels expected to be comparably stringent to shorter-term limits. As stated in the August 21, 2018 NPRM, EPA considered Ohio's control strategy for the Painesville plant and found that the limits in Ohio Administrative Code Chapter 3745–18 (OAC 3745–18) met EPA's guidelines for acceptable emission limits based on a 30-day averaging time.

Comment: The commenter stated that a 30-day averaging time is the same as a 720-hour averaging period rolling on a daily basis, and ''it seems impossible to derive a 720-hour average limit that would ensure hourly emissions of SO_2 are limited to the extent necessary to protect the 1-hour average SO_2 NAAQS, unless it was shown through air dispersion modeling that the maximum uncontrolled hourly emissions from a source would not exceed the NAAQS.''

EPA Response: The compliance calculations for the limits applicable to the Painesville plant units would be 720-hour averages when the unit operates in each of those 720 hours. Hours in which the unit is not operating are not included in the calculation, to focus the compliance test on how well the facility's emissions are controlled during operational hours.

EPA's April 2014 guidance provides the results of analyses which demonstrate that limits based on periods of as long as 30 days (720 hours) can, in many cases, be reasonably considered to provide for attainment of the 2010 SO_2 NAAQS. When a 30-day emission limit is set sufficiently lower than the 1-hour emission limit which the modeling analysis indicated would conservatively provide for attainment, the numerically lower 30-day limit would also be expected to provide for attainment. In accordance with EPA guidance, Ohio conducted modeling to determine the CEV, *i.e.,* the emission rate that, if emitted continuously, would result in attainment. Ohio then established 30-day average limits that are comparably stringent to the 1-hour limits it otherwise would have established. EPA agrees with Ohio that these limits can be expected to provide comparable air quality as the corresponding 1-hour limits would, and EPA considers the 30-day average limits to satisfy the requirement to provide for attainment.

EPA does not agree with the commenter that the application of a longer term average limit requires determining the unit's maximum uncontrolled emission rate or a maximum 1-hour emission rate that might occur in compliance with a longer term average emission limit, or that modeling must be conducted to show that such emission rates do not cause NAAQS violations. The analysis that the commenter proposes would not take proper account of the impact of variable emissions within the longer-term limit. In particular, while such an analysis would assess potential additional exceedances of the NAAQS level on occasions with elevated emissions, such an analysis would fail to reflect the improved air quality on days with lower emissions. Since compliance with a downward adjusted long term average limit necessarily requires any occasions of elevated emissions to be accompanied by occasions of lower than average emissions, the commenter's proposed analysis is inadequate for assessing the net effects of emissions sometimes being higher but more often being lower than the CEV.

Comment: The commenter states that Ohio's approach is inconsistent with EPA's Guideline on Air Quality Models, which in Table 8–1 ''requires modeling for short term (<= 24 hours) NAAQS be based on the allowable emissions over the averaging time of the NAAQS. Yet, the maximum allowable hourly emission rate is difficult to predict from a 30-day average limit for an emissions unit.''

EPA Response: EPA's 2014 guidance for SO_2 SIPs directly addresses the comment regarding Table 8–1. Page A–79 of the guidance states:

> An important caveat regarding Table 8–1 of Appendix W is that this guidance is oriented toward short term emission limits (*e.g.,* 1-hour emission limits), as recommended in previous guidance. Current guidance, providing for use of longer term emission limits, provides that after the state determines the 1-hour limit that would be necessary to provide for attainment, any longer-term limit should be established at a level that is sufficiently lower to provide comparable stringency. Thus, in cases where a state wishes to apply a longer term average limit, the attainment analysis would be based not on the level of the longer-term limit but rather on the level of the corresponding 1-hour emission limit that was shown in the plan to be of comparable stringency.

Accordingly, EPA believes that Ohio has provided an appropriate demonstration that its 30-day average limit, set to be comparably stringent to a 1-hour limit at the modeled CEV, will provide for attainment.

Comment: The commenter said that EPA's April 2014 guidance allows flexibility for sources that cannot meet the hourly rate of SO_2 emissions necessary to attain the NAAQS. The CAA requires the implementation of all reasonably available control measures to provide for attainment. The commenter said that it is reasonable for a source such as the Painesville plant to guard against spikes in sulfur content of fuel and/or SO_2 emissions through proper operation of scrubbers, limiting high sulfur coal, and testing for coal sulfur content. The commenter believes that the flexibility in EPA's guidance has allowed Ohio to propose 30-day average limits for the Painesville plant which fail Congress' direction that EPA shall provide for attainment of the NAAQS.

EPA Response: EPA believes it is important to recognize that some sources may have variable emissions, for example due to variations in fuel sulfur content and operating rate, that can make it extremely difficult, even with a well-designed control strategy, to ensure in practice that stringent hourly limits are never exceeded. The Painesville plant is complying with the Federal Boiler MACT rule by taking enforceable limits on its operations to meet the definition of a Limited Use boiler, operating at 10% of its annual heat input capacity. As such, the plant will only operate intermittently, during periods of high demand or service interruptions. This type of operation reflects a decrease in overall emissions from this source.

The boiler MACT rule does not require that Limited Use boilers install additional control technology, because add-on SO_2 control systems require steady-state operations for good control efficiency and cannot reduce SO_2 emissions effectively for intermittent short-term operations. The Painesville plant's revised rules do require a reduction in allowable coal sulfur content, with coal sampling to confirm sulfur content. Ohio EPA has determined that the Painesville plant is unable to use very low sulfur (Powder River Basin) coal because of the high cost of updating its facilities to handle and use it for its limited operations; because the unique characteristics of the coal has a detrimental effect on the

facility's particulate matter controls; and because of the increased risk of fire during storage of the more volatile low-sulfur coal, which has occurred elsewhere in Ohio with similar coal storage and handling equipment.

EPA believes that the flexibility of the 30-day average limit is reasonable for an intermittently-operating facility such as the Painesville plant. As stated previously, EPA's analyses demonstrated that its requirement for a tighter limit to be used with a longer-term averaging period is likely to yield better air quality than is required with a comparably stringent 1-hour limit. EPA's April 2014 guidance states, ''if periods of hourly emissions above the critical emission value are a rare occurrence at a source, these periods would be unlikely to have a significant impact on air quality, insofar as they would be very unlikely to occur repeatedly at the times when the meteorology is conducive for high ambient concentrations of SO_2.'' The Painesville plant's limit, supplemented by an additional 24-hour boiler heat input cap and the stringent federally enforceable limitation on the plant's annual boiler usage, is expected to provide for attainment of the NAAQS in accordance with the CAA's requirements.

III. What action is EPA taking?

EPA is approving Ohio's April 3, 2015 plan, as supplemented on October 13, 2015 and on March 13, 2017, for attaining the 2010 1-hour SO_2 NAAQS and for meeting other nonattainment area planning requirements for the Lake County SO_2 nonattainment area. EPA is amending the codification in 40 CFR 52.1870(e) to include the approval of Ohio's SO_2 attainment plan for Lake County.

In development of this plan, Ohio amended its rules at OAC 3745–18–49 (F) (establishing new limits for the Painesville plant), OAC 3745–18–03 (B)(9), OAC 3745–18–03 (C)(11), and OAC 3745–18–04(D)(10) (establishing a compliance date and other administrative provisions), and rescinding OAC 3745–18–49(G) (reflecting the enforceable shutdown of the Eastlake plant). These revisions became effective on February 16, 2017. EPA approved these revisions into the SIP, as codified at 40 CFR 52.1870(c), on October 11, 2018 (83 FR 51361), as part of action on a broader range of OAC Chapter 3745–18 revisions. Thus, no additional action is necessary to incorporate the pertinent limits into the SIP, and this action is limited to concluding that Ohio has demonstrated that these previously approved limits provide for attainment of the SO_2 NAAQS in Lake County and that Ohio has met the other planning requirements for this area.

IV. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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 April 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, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: January 29, 2019.

Cathy Stepp,

Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

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

■ 2. In § 52.1870, the table in paragraph (e) is amended by adding an entry for ''SO_2 (2010)'' after the entry for ''$PM_{2.5}$ (2012)'' under the heading ''Summary of Criteria Pollutant Attainment Plans'' to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED OHIO NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Title	Applicable geographical or non-attainment area	State date	EPA approval	Comments
*	*	*	*	*
Summary of Criteria Pollutant Attainment Plans				
*	*	*	*	*
SO_2 (2010)	Lake County	2/16/2017	2/14/2019, [insert **Federal Register** citation].	EPA is approving the following plan elements: The emission inventory; the demonstration of attainment; and revised emission limits as meeting RACM requirements.
*	*	*	*	*

[FR Doc. 2019–02210 Filed 2–13–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2018–0531; FRL–9989–38–Region 4]

Air Plan Approval; North Carolina; Ozone NAAQS Update

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 North Carolina through the North Carolina Division of Air Quality (NCDAQ) with a letter dated March 21, 2018. The SIP submittal includes changes to the State's air quality rules for ozone to be consistent with the National Ambient Air Quality Standards (NAAQS). EPA is approving these provisions of the SIP revision because the State has demonstrated that these changes are consistent with the Clean Air Act (CAA or Act) and federal regulations.

DATES: This rule is effective March 18, 2019.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2018–0531. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Tiereny Bell, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9088. Ms. Bell can also be reached via electronic mail at *bell.tiereny@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Sections 108 and 109 of the CAA govern the establishment, review, and revision, as appropriate, of the NAAQS to protect public health and welfare. The CAA requires periodic review of the air quality criteria—the science upon which the standards are based—and the standards themselves. EPA's regulatory provisions that govern the NAAQS are found at 40 CFR 50—*National Primary and Secondary Ambient Air Quality Standards*. In this rulemaking, EPA is approving revisions to the North Carolina air quality rules addressing Rule 15A NCAC 02D .0405, *Ozone,* in the North Carolina SIP.[1] EPA notes that the cover letter was dated March 21, 2018.[2] Under Subchapter 2D, Section .0405 is amended by updating air quality standards to reflect the most recent ozone NAAQS as well as making textual modifications in the following manner: Removing 0.075 parts per million (ppm) and replacing it with 0.070 ppm; deleting ''8-hour'' and replacing it with ''eight-hour''; deleting the word ''is'' and replacing it with ''shall be'' and later ''shall be deemed''; and deleting Appendix P, which referenced the 2008 Ozone Standard, and replacing it with Appendix U, which references the 2015 Ozone Standard. The SIP submission amending

[1] In the table of North Carolina regulations federally-approved into the SIP at 40 CFR 52.1770(c), 15A NCAC 02D is referred to as ''Subchapter 2D Air Pollution Control Requirements.''

[2] The submittal was received on April 4, 2018.

the North Carolina regulations to incorporate the most recent ozone NAAQS can be found in the docket for this rulemaking at *www.regulations.gov*.

In a notice of proposed rulemaking (NPRM) published on October 1, 2018, (83 FR 49330), EPA proposed to approve revisions to the North Carolina air quality rules addressing Section .0405, *Ozone,* in the North Carolina SIP. Comments on the NPRM were due on or before October 31, 2018. EPA received no adverse comments on the proposed action. EPA is now taking final action to approve the above-referenced revision.

II. 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 North Carolina's NCDAQ Rule under Subchapter 2D, Section .0405, *Ozone,* state effective January 1, 2018, which revises the ozone standard to be consistent with the 2015 ozone NAAQS. 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). Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[3]

III. Final Action

EPA is taking final action and approving the State of North Carolina's March 21, 2018, SIP submission identified in section I above, because these changes are consistent with the CAA and federal regulations.

IV. 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 final action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

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 April 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: December 21, 2018.

Mary S. Walker,

Acting Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart II—North Carolina

■ 2. In § 52.1770, in the table in paragraph (c)(1), revise the entry for ''Section .0405'' under Subchapter 2D, Section .0400, to read as follows:

§ 52.1770 Identification of plan.

* * * * *

(c) * * *

[3] *See* 62 FR 27968 (May 22, 1997).

(1) EPA-APPROVED NORTH CAROLINA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
Subchapter 2D Air Pollution Control Requirements				
*	*	*	*	*
Section .0400 Ambient Air Quality Standards				
*	*	*	*	*
Section .0405	Ozone	1/1/2018	2/14/2019, [Insert citation of publication in **Federal Register**].	
*	*	*	*	*

* * * * *

[FR Doc. 2019–02211 Filed 2–13–19; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 107 and 110

[Docket No. PHMSA–2015–0272 (HM–209A)]

RIN 2137–AF19

Hazardous Materials: Revisions to Hazardous Materials Grants Requirements (FAST Act)

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: PHMSA is revising the Hazardous Materials Regulations pertaining to the Hazardous Materials Grants Program and the Hazardous Materials Emergency Preparedness Grant. This final rule aligns with the Office of Management and Budget's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (''Uniform Guidance'') and implements new requirements set forth by the Fixing America's Surface Transportation (FAST) Act of 2015.

DATES:

Effective date: This rule is effective as of March 18, 2019.

Voluntary compliance date: Voluntary compliance with all amendments is authorized as of February 14, 2019.

FOR FURTHER INFORMATION CONTACT: Shakira Mack, Chief, Hazardous Materials Grants and Registration, (202) 366–1109, *Shakira.Mack@dot.gov,* Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

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I. Background

On October 11, 2016, PHMSA published a notice of proposed rulemaking (NPRM) [Docket No. PHMSA–2015–0272 (HM–209A); 81 FR 70067] proposing changes to the Hazardous Materials Grants Program in 49 CFR part 110. The NPRM proposed to align with guidance offered in the Office of Management and Budget's (OMB) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR part 200) (''Uniform Guidance''), as well as new requirements set forth by the FAST Act of 2015 (Pub. L. 114–94; December 4, 2015).

OMB's Uniform Guidance was codified in 2 CFR part 200 in an interim final rule [79 FR 75867] on December 19, 2014. It streamlines the Federal Government's guidance on grant awards, with the goal of reducing administrative burden on grant recipients, as well as waste and misuse of Federal funding. Publication of the Uniform Guidance superseded the previous OMB circular guidance and requirements found in 49 CFR part 18. All Federal grants issued on or after December 26, 2014, were required to comply with these requirements.

The FAST Act was enacted December 4, 2015, to provide long-term funding for transportation infrastructure planning and investment. The FAST Act expanded funding appropriations for the Hazardous Materials Emergency Preparedness (HMEP) Grant. The FAST Act also merged the HMEP planning and training grant funding into a single grant fund, meaning that grantees no longer need to complete separate grant applications for their planning and training grant programs. Lastly, the FAST Act added a new, competitive Community Safety Grant.

Historically, the Hazardous Materials Grants Program was comprised of three grants: The HMEP Grant, the Supplemental Public Sector Training (SPST) Grant, and the Hazardous Materials Instructor Training (HMIT) Grant. These grants are funded by fees collected from hazardous materials (hazmat) shippers and carriers who offer for transportation or transport certain hazmat in intrastate, interstate, or foreign commerce and who must register with the U.S. Department of Transportation in accordance with 49 CFR part 107, subpart G. In 2015, the FAST Act established a new Community Safety Grant Program funded by Congressional appropriations. PHMSA awarded two

Community Safety Grants for the first time in fiscal year 2017.

This final rule revises part 110 for the codified HMEP Grant requirements, reflecting changes mandated by the FAST Act, as proposed in the NPRM, and revising regulatory citations to OMB's Uniform Guidance in 2 CFR part 200. The requirements specific to the SPST, HMIT, and Community Safety Grants are not codified, but are found at *https://www.phmsa.dot.gov/*. PHMSA is also making a non-substantive change to the registration payment address in part 107 to reflect accurate PHMSA grant and registration program office information.

The HMEP Grant was established in 1990 by the Hazardous Materials Transportation Uniform Safety Act (HMTUSA; Pub. L. 101–615). In 1993, PHMSA's predecessor agency, the Research and Special Programs Administration (RSPA), began issuing grants to assist States, Territories, and Indian tribes to carry out emergency preparedness and training activities in order to ensure communities could effectively respond to transportation incidents involving hazmat. PHMSA's HMEP Grants fund public and first responder planning efforts to improve hazmat transportation incident response. This grant allows flexibility to implement training and planning programs that address differing needs based on demographics, emergency response capabilities, commodity flow studies, and hazard analysis. Prior to 2009, the HMEP Grant awarded $12.8 million annually; award amounts thereafter increased to $21.9 million annually.

II. Comment Discussion

PHMSA received no in-scope comments in response to the NPRM, and is adopting the proposed amendments except for certain modifications for enhanced clarity and accuracy. The adopted changes and revisions are discussed as follows in the section-by-section review.

III. Section-by-Section Review

Part 107

Section 107.616

Section 107.616 details the payment procedures for the registration of persons who offer or transport hazmat in accordance with part 107 subpart G. This final rule revises paragraph (a) of § 107.616 to update the P.O. Box mailing address for registration payments. The new address is: U.S. Department of Transportation—Hazardous Materials, P.O. Box 6200–01, Portland, OR 97228–6200. This final rule also updates the web address for electronic payments. While not originally proposed in the NPRM, these changes are non-substantive and are necessary to ensure that information in the regulations pertaining to the PHMSA Grant and Registration Program office are up to date and readily understood. These revisions will ensure that there is no confusion on where to send registration payments, and therefore, PHMSA considers it within the scope of this rulemaking.

Part 110

Introduction

PHMSA is revising part 110 to reflect HMEP Grant requirements and is not including the proposed language from the NPRM related to HMIT, SPST, and Community Safety Grants. This change will ensure consistency and clarity in the regulations. The following section-by-section review highlights instances of this change.

Section 110.1

Section 110.1 outlines the purpose of part 110. This final rule amends § 110.1 to align with OMB's Uniform Guidance (the government-wide framework for grants management) found in 2 CFR part 200 and makes editorial amendments. In this final rule, PHMSA is not including the proposed language addressing nonprofit organizations because they are not HMEP Grant recipients. PHMSA notes, however, that inter-tribal coalitions of federally recognized tribes, even those incorporated as a nonprofit corporation under State law, are eligible HMEP Grant recipients. Lastly, although not proposed in the NPRM, this final rule makes two minor editorial amendments and adds a sentence directing stakeholders to the following website for information on the HMIT, SPST, and Community Safety Grant Programs: *https://www.phmsa.dot.gov/*. Because these were clarifying amendments, PHMSA does not believe that notice and comment were required.

Section 110.5

Section 110.5 outlines the scope of the Hazardous Materials Grants Program in part 110. PHMSA is not adopting the NPRM's proposed language in paragraph (a) for nonprofit organizations because they are not eligible for HMEP Grants. Note that inter-tribal coalitions of federally recognized tribes, even those incorporated as a nonprofit corporation under State law, are eligible HMEP Grant recipients.

As proposed in the NPRM, this final rule revises paragraph (b) to reflect the correct reference citation for OMB's Uniform Guidance, which is now found in 2 CFR part 200. Additionally, this section reflects the current name for OMB's Uniform Guidance, which is ''Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards'' (previously titled ''Uniform Administrative Requirements for Grants and Cooperative Agreements''). Although not proposed in the NPRM, this change is within the scope of this rulemaking to align with the 2 CFR part 200.

In this final rule, PHMSA is adding a website in paragraph (c) to locate and obtain electronic versions of standard forms and OMB circulars referenced throughout 2 CFR part 200. The website (*see https://www.grants.gov/web/grants/forms.html*) is revised from the NPRM, because the website proposed in the NPRM (*https://www.whitehouse.gov/omb/grants_forms*) no longer posts the standard forms or relevant OMB circulars. Alternatively, and as currently specified in the Hazardous Materials Program requirements, a person may obtain copies by contacting the Grants Chief in PHMSA's Office of Hazardous Materials Safety. Contact information for the program office is available at PHMSA's website (*https://www.phmsa.dot.gov/*). The change to the PHMSA office title is adopted in this final rule as was proposed in the NPRM, with additional minor editorial amendments.

Section 110.10

Section 110.10 specifies to whom part 110 and the HMEP Grant apply. This final rule amends the title of this section to ''Administering the hazardous materials emergency preparedness grants,'' as opposed to the proposed title from the NPRM (''Administering hazardous materials grants'') in an effort to clarify that the regulations are specific to the HMEP Grant. As proposed in the NPRM, PHMSA is revising the language in § 110.10 to include Territories and is removing outdated language specifying which entities may apply for which grants. PHMSA is not adopting the proposed language for nonprofit organizations because they are not eligible for the HMEP Grant. Note that inter-tribal coalitions of federally recognized tribes, even those incorporated as a nonprofit corporation under State law, are eligible HMEP Grant recipients.

Section 110.20

Section 110.20 outlines the definitions applicable to part 110. As proposed in the NPRM, the introductory language is amended to reflect that

unless defined in part 110, all terms defined in 49 U.S.C. 5102 are used in their statutory meaning and all terms defined in 2 CFR part 200, with respect to administrative requirements for grants, are used as defined therein. In addition, the remaining language in § 110.20 defines the other terms used in part 110. Finally, the definition of *Associate Administrator* is revised, the definition of *Public sector employee* is added, and the definition of *Indian country* is deleted, as proposed in the NPRM.

PHMSA is not adopting the proposed definition of *Nonprofit organizations* in this final rule because they are not eligible for HMEP Grants and therefore not referenced in part 110. Note that inter-tribal coalitions of federally recognized tribes, even those incorporated as a nonprofit corporation under State law, are eligible HMEP Grant recipients. PHMSA is also not adopting the proposed definitions of *Tribal Emergency Planning Committee (TEPC)* and *Tribal Emergency Response Committee (TERC)* because they are not referenced in part 110, and are therefore unnecessary to adopt.

Furthermore, while not proposed in the NPRM, PHMSA is removing the definitions of *Budget Period, Cost review, Indian Tribe, Local Emergency Planning Committee (LEPC), Project, Project manager, Project officer, Project period, State Emergency Response Commission (SERC),* and *Statement of Work* in this final rule. These definitions are either not referenced in part 110 or are already defined in 2 CFR part 200. Therefore, PHMSA determined that it is unnecessary to duplicate the definitions in part 110 and their removal will increase clarity and avoid the need for a conforming rulemaking by PHMSA should revisions be made to the definitions in 2 CFR part 200.

Lastly, while not proposed in the NPRM, PHMSA is revising the definition of *Allowable costs* and *Political subdivision,* to better reflect 2 CFR part 200 and to ensure consistency within part 110.

Section 110.30

Section 110.30 addresses application requirements for the HMEP Grant. In order to more appropriately communicate the requirements of this section, and as proposed in the NPRM, PHMSA is amending the title of § 110.30 to ''Hazardous materials emergency preparedness grant application.'' Additionally, as proposed in the NPRM, PHMSA is amending paragraph (a) to remove specific application requirements, instead referencing that instructions are available in the applicable Notice of Funding Opportunity and application kit. As proposed, PHMSA is also amending paragraph (a) to require electronic submissions of grant applications.

Further, PHMSA discovered an editorial error in the title of grant announcements. Therefore, in this final rule, PHMSA is revising paragraph (a) to specify that an HMEP grant announcement is called a ''Notice of Funding Opportunity,'' instead of a ''Notice of Funding Announcement.'' Lastly, although not originally proposed in the NPRM, PHMSA is removing the reference to the website ''*http://www.grants.gov*'' and is directing the reader to submit the grant application package at ''the OMB designated website.'' This allows for future regulatory flexibility if the submission website were to change. Currently, HMEP Grant applications are submitted at *http://www.grants.gov*. Applicants can always contact the Grants Chief to verify the correct website for submittal of a grant application package.

In the NPRM, PHMSA proposed to remove and reserve paragraphs (b) and (c) because these requirements are now found in 2 CFR part 200 and the HMEP Grant is no longer separated between planning and training. However, in this final rule, PHMSA is removing these paragraphs (instead of removing and reserving), as it is not anticipated that these paragraphs will be added in future rulemakings. This change better aligns with required regulatory drafting practices in the *Office of the Federal Register* Document Drafting Handbook. Because of this change, the paragraph header ''(a) *General*'' is also removed.

Section 110.40

Section 110.40 addresses activities that may be eligible for HMEP Grant funding. This section is revised as proposed in the NPRM with the exception that in this final rule, PHMSA is making minor editorial amendments to the proposed language in paragraphs (a), (b), (g), and (m). These amendments provide additional clarity and better align with 2 CFR part 200. For example, paragraph (g) is revised to read as ''[t]o train public sector employees to respond to hazardous materials transportation accidents and incidents'' (previously ''[t]o train public sector employees to respond to accidents and incidents involving the transportation of hazardous material'') and paragraph (m) is revised to read as ''[a]dditional hazardous materials emergency preparedness activities not otherwise described in this section that the Associate Administrator deems appropriate under the grant agreement'' (previously ''[f]or additional activities the Associate Administrator deems appropriate to implement the scope of work for the proposed project and approved in the grant.'').

Furthermore, as proposed in the NPRM, paragraphs (a) and (b) are revised to address those activities previously described in paragraphs (a)(1) and (2). Paragraphs (a)(3) through (6) are now paragraphs (c) through (f), and paragraphs (b)(1) through (5) are now paragraphs (g) through (l). As the activities in (a)(7) and (b)(6) are nearly identical, the duplicative language is combined in paragraph (m). Furthermore, as proposed in the NPRM, the language in these paragraphs is revised for consistency, and the term ''Territory'' is added in paragraph (k).

Section 110.50

Section 110.50 addresses the requirements and procedures for Federal funding for both pre- and post-award purchases. Notably, 2 CFR 200.305 payment provisions state that a non-Federal entity:

> [M]ust be paid in advance, provided it maintains or demonstrates the willingness to maintain both written procedures that minimize the time elapsing between the transport of funds and disbursement by the non-Federal entity, and financial management systems that meet the standards for fund control and accountability as established in this part. Advance payments to a non-Federal entity must be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the non-Federal entity in carrying out the purpose of the approved program or project.

While 2 CFR part 200 does not specify funding techniques for States, advanced payments to State grantees would more effectively focus Federal resources on improving performance and outcomes while ensuring the financial integrity of taxpayer dollars in partnership with non-Federal stakeholders.

In this final rule, paragraph (a) is revised to adopt provisions that allow grantees to receive reimbursement of pre-award costs, as proposed in the NPRM. However, PHMSA is not adopting the proposed first two sentences of paragraph (a) because they are duplicative of the 2 CFR 200.458 definition of *Pre-award costs*. Additionally, as proposed in the NPRM, PHMSA is revising paragraph (b) to use more appropriate language, revising ''reimbursement'' to ''payment,'' and specifying that for additional grant funds the amendment submitted must be a ''supplemental amendment.''

To better align § 110.50 with 2 CFR part 200, maintain consistency

throughout part 110, and provide clarity, PHMSA's final rule includes several changes to language proposed in the NPRM. PHMSA is revising ''grantee'' to ''recipient,'' ''project objectives'' to ''activities,'' ''award'' to ''grant'' or ''agreement,'' ''competing'' to ''competitive,'' and ''non-competing'' to ''non-competitive,'' as appropriate, to ensure § 110.50 remains consistent with other changes in this final rule. In addition, PHMSA is replacing language in the last sentence of paragraph (a)(1) from ''time frame or in any way adversely affect the conduct of the project'' to ''period of performance'' because this terminology is more consistent with 2 CFR part 200. Furthermore, PHMSA is revising ''budget period'' in paragraph (a)(2) to ''period of performance'' as they have the same intended meaning and because ''period of performance'' is defined in 2 CFR part 200.

PHMSA is also revising paragraph (a)(2) by removing the second half of the sentence and removing paragraph (b)(1) because they are duplicative of requirements addressed in 2 CFR part 200. Therefore, instead of redesignating paragraph (c) as paragraph (b)(2) as proposed in the NPRM, in this final rule PHMSA is merging paragraph (c) with the introductory sentence in paragraph (b). Lastly, paragraph (b) is revised to read as ''Payments may not be made for activities not approved in the grant agreement'' (proposed in the NPRM as ''Payment may not be made for a project plan unless approved in the grant award''), because it simplifies the intended meaning of the requirement, and ensures consistency with other changes in this final rule. Though these changes were not proposed in the NPRM, they ensure that the regulations are more consistent with 2 CFR part 200 and therefore, are within the scope of this rulemaking.

Section 110.60

Section 110.60 addresses funding requirements for direct and indirect costs and funds that are acceptable or unacceptable for matching and cost sharing purposes. PHMSA inadvertently did not include this section in the NPRM, although there was a citation reference to 49 CFR part 18. Because the scope of this rulemaking is to remove and replace the outdated 49 CFR part 18 requirements with 2 CFR part 200 requirements, PHMSA is revising this section without notice and comment as a conforming amendment consistent with similar revisions made within 49 CFR part 110.

Consistent with other changes in the final rule, in the first sentence of paragraph (a), ''recipient agency'' is revised as ''recipient'' and ''activities covered under the grant award program'' is revised as ''activities approved in the grant agreement.'' These changes ensure clarity, consistency, and reflect current PHMSA Grants Program terminology.

Furthermore, PHMSA notes that most of the cost sharing requirements of § 110.60 are addressed in 2 CFR part 200. In order to ensure that § 110.60 does not impose additional requirements, or requirements that differ from 2 CFR part 200, PHMSA is removing all regulatory text except the revised first sentence of paragraph (a), as that sentence sets out a unique requirement of the HMEP Grant. Because grantees are already subject to the cost sharing requirements of 2 CFR part 200, PHMSA does not believe the removal of this text imposes any new requirements on grantees, and thus does not warrant notice and comment.

Lastly, to maintain consistency with other changes in this final rule, PHMSA is revising the title of the section to ''Cost sharing,'' from its previous title ''Cost sharing for planning and training,'' because the HMEP Grant is no longer separated between planning and training.

Section 110.70

Section 110.70 outlines the requirements for a grant recipient to account and manage funds provided in a grant award. Although PHMSA proposed a number of revisions to better align this section with the financial and program management requirements outlined in 2 CFR 200.302, PHMSA has determined that this section does not include any requirements that are not already required of a grantee in 2 CFR part 200. Therefore, to avoid redundancy and ensure consistency with 2 CFR part 200, in this final rule, PHMSA is removing and reserving § 110.70. While not proposed in the NPRM, the scope of this rulemaking is to align 49 CFR part 110 with the requirements of 2 CFR part 200. Therefore, PHMSA believes that this change is consistent with other changes in this final rule, and is within the scope of this rulemaking.

Section 110.80

Section 110.80 outlines the requirements for grant recipients to use procurement procedures and practices. Although PHMSA proposed amendments in the NPRM to update regulatory requirements and direct grant recipients to 2 CFR part 200 for procurement standards in § 110.80, PHMSA has identified that there were no specific agency procurement standards in this section. Therefore, to avoid redundancy and ensure consistency with 2 CFR part 200, in this final rule, PHMSA is removing and reserving this section. While not proposed in the NPRM, the scope of this rulemaking is to align 49 CFR part 110 with the requirements of 2 CFR part 200. Therefore, PHMSA believes that this change is consistent with other changes in this final rule, and is within the scope of this rulemaking.

Section 110.90

Section 110.90 outlines grant monitoring, reporting, and record retention requirements for recipients. In the NPRM, PHMSA proposed to make amendments to align with requirements in 2 CFR part 200. However, following publication of the NPRM, PHMSA determined that the proposed language in § 110.90 did not differ from the requirements in 2 CFR part 200. Therefore, for greater consistency and to avoid redundancy, in this final rule, PHMSA is removing and reserving § 110.90. While not proposed in the NPRM, the scope of this rulemaking is to align 49 CFR part 110 with the requirements of 2 CFR part 200. Therefore, PHMSA believes that this change is consistent with other changes in this final rule, and is within the scope of this rulemaking.

Section 110.100

Section 110.100 outlines requirements for failure to comply with any portion of the grant agreement. In this final rule, PHMSA is revising § 110.100 as proposed in the NPRM, except that PHMSA is not revising the 49 CFR part 18 references to 2 CFR part 200 references. Instead, PHMSA is removing those references because, as outlined in the rulemaking scope (see § 110.5), grantees are subject to all of 2 CFR part 200, and therefore the references are redundant. Furthermore, this change does not remove any regulatory requirements and is consistent with other changes in this final rule. PHMSA noted that references to ''grant award'' in the NPRM should instead say ''grant agreement'' to better reflect current requirements and OMB's Uniform Guidance. Additionally, ''recipient agency'' is revised to ''recipient'' to allow more regulatory flexibility. While these changes were not proposed in the NPRM, they clarify the current regulatory requirements and are within the scope of this rulemaking.

Section 110.110

Section 110.110 outlines requirements for the closure of a grant, including

when a grant is considered closed and requirements for report submissions. PHMSA notes that the revised section title ''Post-award requirements'' more appropriately reflects the requirements of this section, as opposed to the title proposed in the NPRM (''After-grant requirements'').

As proposed in the NPRM, the title of Associate Administrator is revised to reflect current terminology. PHMSA is not making the proposed change to replace the outdated citation of subpart D of 49 CFR part 18 to 2 CFR part 200 because, as identified in the scope of part 110 (see § 110.5), grantees are subject to 2 CFR part 200 requirements and this reference is duplicative. While not proposed in the NPRM, PHMSA is also revising instances of ''award'' to ''grant,'' and ''project manager'' is revised to ''recipient,'' consistent with other changes in this final rule.

Section 110.120

Section 110.120 outlines how a recipient may request deviation from the non-statutory provisions of part 110. For deviation requests, PHMSA is revising the mailing address to an email address, as proposed in the NPRM. Although not proposed in the NPRM, PHMSA revised ''recipient agencies'' to ''recipient'' in this final rule to better align § 110.120 with 2 CFR part 200 and to maintain regulatory consistency. In this final rule, although not proposed in the NPRM, PHMSA is also removing reference to part 110, as the language was redundant.

Section 110.130

Section 110.130 addresses who is responsible for resolving any disputes. As proposed in the NPRM, the position titles of the PHMSA Hazardous Materials Grants Program staff are updated, with a correction to the title of ''Grant Specialist'' to ''Grant Management Specialist.'' Additionally, as proposed in the NPRM, ''Administrator, PHMSA'' is revised to read as ''Associate Administrator.'' These regulatory changes reflect current operational titles. If a grantee has further questions regarding who their respective contact is within PHMSA, they may wish to contact the Hazardous Materials Grants Program office at 202–366–1109.

IV. Regulatory Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This final rule is published under the authority of Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101 *et seq.*). Section 5103(b) of Federal hazmat law authorizes the Secretary of Transportation to prescribe regulations for the safe transportation, including security, of hazardous materials in intrastate, interstate, and foreign commerce. Section 5107, as amended, establishes a competitive program for making grants to nonprofit organizations for conducting national outreach and training programs to assist communities in preparing for and responding to accidents and incidents involving the transportation of hazardous materials, including Class 3 flammable liquids by rail; and training State and local personnel responsible for enforcing the safe transportation of hazardous materials, including Class 3 flammable liquids.

Section 5108 permits the Secretary to collect registration fees from people transporting certain quantities of hazardous materials for deposit into an account used to fund the HMEP Grant Program. Section 5116, as amended, authorizes the Secretary to make grants to States and Indian tribes by combining planning and training grants, and to create supplemental training grants to national nonprofit fire service organizations. The Secretary has delegated these authorizations to PHMSA's Administrator (see 49 CFR 1.97(b)). This final rule revises the regulations as they pertain to hazardous materials public sector training and planning grants.

B. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is considered a non-significant regulatory action under section 3(f) of Executive Order 12866, ''Regulatory Planning and Review,'' [58 FR 51735 (Oct. 4, 1993)] and was not reviewed by OMB. This final rule is considered a non-significant rule under the DOT Regulatory Policies and Procedures of February 26, 1979 [44 FR 11034]. This final rule does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; rather, it revises regulations to comply with the current Federal statute and guidance, as well as PHMSA policies and procedures.

PHMSA evaluated the Hazardous Materials Grants Program regulations and determined that they are outdated and, in part, unnecessarily burdensome. The current regulation citations for grant management are out-of-date and are superseded by 2 CFR part 200. Therefore, PHMSA is updating 49 CFR part 110 to reflect current Federal statute and guidance, as well as PHMSA policies and procedures. This final rule does not generate any quantifiable cost or cost savings, however it does reduce burden on grantee applicants. Specifically, this final rule removes out-of-date citations, revises definitions and other regulations that do not align with current statutory requirements, OMB guidance, or PHMSA policies and procedures. Therefore, these changes will ease potential burden on any stakeholders reviewing and complying with 49 CFR part 110. As no in-scope public comments were received, PHMSA believes that the change in regulatory requirements will not impose undue burden on applicable parties.

C. Executive Order 13771

This final rule is considered an Executive Order 13771 deregulatory action, as explained above.

D. Executive Order 13132

This final rule was analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism'') [64 FR 43255 (Aug. 10, 1999)] and the presidential memorandum on ''Preemption'' [74 FR 24693 (May 22, 2009)]. Executive Order 13132 requires agencies to assure meaningful and timely input by State and local officials in the development of regulatory policies that may 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.'' This final rule does not propose any regulation that has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal hazmat law, 49 U.S.C. 5101–5128, contains an express preemption provision [49 U.S.C. 5125(b)] that preempts State, local, and Indian tribal requirements on the following subjects:

(1) The designation, description, and classification of hazardous materials;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials; and

(5) The design, manufacture, fabrication, inspection, marking,

maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material in commerce.

This final rule does not address any of these covered subjects.

E. Executive Order 13175

This final rule was analyzed in accordance with the principles and criteria contained in Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments,'' [65 FR 67249 (Nov. 9, 2000)] which requires agencies to assure meaningful and timely input from Indian tribal government representatives in the development of rules that significantly or uniquely affect Tribal communities by imposing ''substantial direct compliance costs'' or ''substantial direct effects'' on such communities or that affect the relationship and distribution of power between the Federal Government and Indian tribes. This final rule does not have such implications, as Tribes are currently subject to the statutory requirements that PHMSA is adopting in the regulations. Therefore, the funding and consultation requirements of Executive Order 13175 do not apply.

F. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires agencies to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. There are no costs to small entities associated with this final rule. The amendments herein are to clarify and simplify existing regulations surrounding PHMSA-issued grants and to comply with current statutes. The grant recipients affected by this final rule are States, Territories, and Indian tribes. These entities currently comply with the statutory requirements that PHMSA is incorporating in the regulations; therefore, no burden is added. Consequently, PHMSA certifies that this final rule does not have a significant economic impact on a substantial number of small entities.

G. Paperwork Reduction Act

PHMSA currently has an approved information collection package under OMB Control Number 2137–0586 titled, ''Hazardous Materials Public Sector Training & Planning Grants,'' with an expiration date of June 29, 2019. This final rule will not result in an increase in the time spent to apply, maintain, and close out a grant application cycle and therefore, does not necessitate the revision of this information collection package in either the annual burden or cost for changes under part 110.

Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it was approved by OMB and displays a valid OMB control number. Regulations implementing the Paperwork Reduction Act of 1995 require that PHMSA provide interested members of the public and affected agencies an opportunity to comment on information and recordkeeping requirements (see Title 5 CFR 1320.8(d)). We received no in-scope comments associated with this rulemaking.

H. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned 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 the Spring and the Fall of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

I. Unfunded Mandates Reform Act

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $155 million or more to either State, local, or Tribal governments, in the aggregate, or to the private sector and is the least burdensome alternative that achieves the object of the rulemaking.

J. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321–4347), and implementing regulations by the Council on Environmental Quality (40 CFR part 1500) require Federal agencies to consider the consequences of major Federal actions and to prepare a detailed statement on actions that significantly affect the quality of the human environment.

This final rule is procedural in nature and revises the regulations pertaining to the Hazardous Materials Grant Program, which generally supports state and tribal governments in emergency preparedness and hazmat safety training. The regulatory changes in this final rule reflect current Federal statute and guidance, as well as PHMSA's policies and procedures. Therefore, PHMSA has determined that the implementation of the final rule will not have a significant impact on the quality of the human environment.

If PHMSA took no action and opted to not make revisions to reflect current Federal statute and guidance and PHMSA's policies and procedures, PHMSA would not expect a different environmental outcome. However, with no action, PHMSA's grant program would not get the benefit of a more streamlined and efficient process, which is in place to reduce threats to the human environment from hazmat incidents.

In developing this final rule, PHMSA sought comment from the following modal partners:

- Federal Aviation Administration
- Federal Motor Carrier Safety Administration
- Federal Railroad Administration
- United States Coast Guard

PHMSA did not receive any adverse comments on the amendments in this final rule from these Federal agencies. In addition, PHMSA did not receive any in-scope public comments regarding the environmental impact of this final rule.

K. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit and including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS) which can be reviewed at *www.dot.gov/privacy*.

L. Executive Order 13609 and International Trade Analysis

Under Executive Order 13609, ''Promoting International Regulatory Cooperation,'' [77 FR 26413 (May 4, 2012)] agencies must consider whether the impacts associated with significant variations between domestic and international regulatory approaches are unnecessary or may impair the ability of American business to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements. This final rule does not impact international trade.

M. National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) directs Federal agencies to use voluntary consensus standards in their regulatory activities unless doing so is inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, test methods, or performance requirements) that are developed or adopted by voluntary consensus standards bodies. This final rule makes revisions to PHMSA Hazardous Materials Grants Program requirements consistent with current Federal statute and guidance, as well as PHMSA policies and procedures; it does not involve use of voluntary consensus standards.

N. Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' [66 FR 28355 (May 22, 2001)] requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' A ''significant energy action'' is defined as any action by an agency (normally published in the **Federal Register**) that promulgates, or is expected to lead to the promulgation of, a final rule or regulation (including a notice of inquiry, ANPRM, and NPRM) that (1)(i) is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.

PHMSA has evaluated this final rule in accordance with Executive Order 13211 and determined that it will not have a significant adverse effect on the supply, distribution, or use of energy. Consequently, PHMSA has determined that this regulatory action is not a ''significant energy action'' within the meaning of Executive Order 13211.

List of Subjects

49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements.

49 CFR Part 110

Disaster assistance, Education, Grant programs—environmental protection, Grant programs—Indians, Hazardous materials transportation, Hazardous substances, Indians, Reporting and recordkeeping requirements.

In consideration of the foregoing, PHMSA amends 49 CFR chapter I as follows:

PART 107—HAZARDOUS MATERIALS PUBLIC SECTOR TRAINING AND PLANNING GRANTS

■ 1. The authority citation for part 107 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 44701; Pub. L. 101–410 section 4; Pub. L. 104–121, sections 212–213; Pub. L 104–134, section 31001; Pub. L. 114–74 section 4 (28 U.S.C. 2461 note); 49 CFR 1.81 and 1.97.

■ 2. In § 107.616, revise paragraph (a) to read as follows:

§ 107.616 Payment procedures.

(a) Each person subject to the requirements of this subpart must mail the registration statement and payment in full to the U.S. Department of Transportation—Hazardous Materials, P.O. Box 6200–01, Portland, OR 97228–6200, or submit the statement and payment electronically through the Department's e-Commerce internet site. Access to this service is provided at *https://www.phmsa.dot.gov/hazmat/registration*. A registrant required to file an amended registration statement under § 107.608(c) of this subpart must mail it to the same address or submit it through the same internet site.

* * * * *

PART 110—HAZARDOUS MATERIALS PUBLIC SECTOR TRAINING AND PLANNING GRANTS

■ 3. The authority citation for part 110 is revised to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.97.

■ 4. Revise § 110.1 to read as follows:

§ 110.1 Purpose.

This part sets forth procedures for grants to States, Territories, and Indian tribes to support emergency planning and training to respond to hazardous materials emergencies, particularly those involving transportation. Grants may also be used to enhance the implementation of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11001 *et seq.*). For information regarding the Hazardous Materials Instructor Training, Supplemental Public Sector Training, and Community Safety grants, please refer to PHMSA's website at: *https://www.phmsa.dot.gov/*.

■ 5. Revise § 110.5 to read as follows:

§ 110.5 Scope.

(a) This part applies to States, Territories, and Indian tribes and contains the program requirements for public sector grants to support hazardous materials emergency planning and training efforts.

(b) The requirements contained in 2 CFR part 200 ''Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,'' apply to grants issued under this part.

(c) Copies of standard forms and OMB circulars referenced in this part are available at *https://www.grants.gov/web/grants/forms.html* or from the Grants Chief, Office of Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

■ 6. Revise § 110.10 to read as follows:

§ 110.10 Administering the hazardous materials emergency preparedness grants.

This part applies to States, Territories, and Indian tribes.

■ 7. Revise § 110.20 to read as follows:

§ 110.20 Definitions.

Unless defined in this part, all terms defined in 49 U.S.C. 5102 are used in their statutory meaning and all terms defined in 2 CFR part 200 with respect to administrative requirements for grants are used as defined therein. Other terms used in this part are defined as follows:

Allowable costs means those costs that are: Eligible, reasonable, necessary, and allocable to the activities permitted by the appropriate Federal cost principles, and approved in the grant.

Associate Administrator means the Associate Administrator for Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration or a person designated by the Associate Administrator.

National curriculum means the curriculum required to be developed under 49 U.S.C. 5115 and necessary to train public sector emergency response and preparedness teams, enabling them to comply with performance standards as stated in 49 U.S.C. 5115(c).

Political subdivision means a county, municipality, city, town, township, local public authority (including any public and Indian housing agency under the United States Housing Act of 1937), school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under State law), any other regional or

interstate government entity, or any agency or instrumentality of a local government.

Public sector employee means an individual employed by a State, political subdivision of a State, Territory, or Indian tribe and who during the course of employment has responsibilities related to responding to an accident or incident involving the transportation of hazardous material, including an individual employed by a State, political subdivision of a State, Territory, or Indian tribe as a firefighter or law enforcement officer and an individual who volunteers to serve as a firefighter for a State, political subdivision of a State, Territory, or Indian tribe.

■ 8. Revise § 110.30 to read as follows:

§ 110.30 Hazardous materials emergency preparedness grant application.

An application must comply with the applicable Notice of Funding Opportunity that will include or reference forms approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3502). Applicants are required to electronically submit application packages at the OMB designated website. Applications must adhere to the instructions outlined in the Notice of Funding Opportunity and application kit.

■ 9. Revise § 110.40 to read as follows:

§ 110.40 Activities eligible for hazardous materials emergency preparedness grant funding.

Eligible applicants may receive funding for the following activities:

(a) To develop, improve, and implement emergency plans required under the Emergency Planning and Community Right-to-Know Act of 1986, as well as exercises that test the emergency plan. To enhance emergency plans to include hazard analysis, as well as response procedures for emergencies involving transportation of hazardous materials.

(b) To determine commodity flow patterns of hazardous materials within a State, between a State and another State, Territory, or Tribal lands, and develop and maintain a system to keep such information current.

(c) To determine the need for regional hazardous materials emergency response teams.

(d) To assess local response capabilities.

(e) To conduct emergency response drills and exercises associated with emergency preparedness plans.

(f) To provide for technical staff to support the planning effort.

(g) To train public sector employees to respond to hazardous materials transportation accidents and incidents.

(h) To determine the number of public sector employees employed or used by a political subdivision who need the proposed training and to select courses consistent with national consensus standards or the National Curriculum.

(i) To deliver comprehensive preparedness and response training to public sector employees, which may include design and delivery of preparedness and response training to meet specialized needs, and financial assistance for trainees and for the trainers, if appropriate, such as tuition, travel expenses to and from a training facility, and room and board while at the training facility.

(j) To deliver emergency response drills and exercises associated with training, a course of study, and tests and evaluation of emergency preparedness plans.

(k) To pay expenses associated with training by a person (including a department, agency, or instrumentality of a State or political subdivision thereof, a Territory, or an Indian tribe) and activities necessary to monitor such training including, but not limited to examinations, critiques, and instructor evaluations.

(l) To maintain staff to manage the training effort designed to result in increased benefits, proficiency, and rapid deployment of local and regional responders.

(m) Additional hazardous materials emergency preparedness activities not otherwise described in this section that the Associate Administrator deems appropriate under the grant agreement.

■ 10. Revise § 110.50 to read as follows:

§ 110.50 Disbursement of grant funds.

(a) *Pre-award costs.* (1) PHMSA expects the recipient to be fully aware that pre-award costs result in borrowing against future support and that such borrowing must not impair the recipient's ability to accomplish the activities in the approved period of performance.

(2) A recipient may, at its own risk, incur pre-award costs to cover costs up to 90 days before the beginning date of the initial period of performance.

(3) The incurrence of pre-award costs in anticipation of a competitive or non-competitive grant imposes no obligation on PHMSA under any circumstances, including in the event of:

(i) The absence of appropriations;

(ii) A grant is not subsequently being made; or

(iii) A grant being made for a lesser amount than the recipient anticipated.

(b) Payments may not be made for activities not approved in the grant agreement. If a recipient seeks additional grant funds, the supplemental amendment request will be evaluated on the basis of needs, performance, and availability of grant funds. An existing grant is not a commitment of future funding.

■ 11. Revise § 110.60 to read as follows:

§ 110.60 Cost sharing.

The recipient must provide 20 percent of the direct and indirect costs of all activities approved in the grant agreement with non-Federal funds.

■ 12. Remove and reserve §§ 110.70, 110.80, and 110.90.

§ § 110.70, 110.80, and 110.90 [Removed and Reserved]

■ 13. Revise § 110.100 to read as follows:

§ 110.100 Enforcement.

If a recipient fails to comply with any term of the grant agreement, a noncompliance action may be taken. The recipient will have the opportunity to object and provide information and documentation challenging the suspension or termination action. Costs incurred by the recipient during a suspension or after termination of the grant agreement are not allowable unless the Associate Administrator authorizes it in writing. Grant agreements may also be terminated in whole or in part with the consent of the recipient at any agreed upon effective date, or by the recipient upon written notification.

■ 14. Revise § 110.110 to read as follows:

§ 110.110 Post-award requirements.

The Associate Administrator will close out the grant upon determination that all applicable administrative actions and all required work of the grant are complete. The recipient must submit all financial, performance, and other reports required as a condition of the grant within 90 days after the expiration or termination of the grant. This time frame may be extended by the Associate Administrator for cause.

■ 15. Revise § 110.120 to read as follows:

§ 110.120 Deviation from this part.

Recipients may request a deviation from the non-statutory provisions of this part. The Associate Administrator will respond to such requests in writing. If appropriate, the decision will be included in the grant agreement. Request for deviations from this part

must be submitted electronically to the Grants Chief at *HMEP.Grants@dot.gov*.

■ 16. Revise § 110.130 to read as follows:

§ 110.130 Disputes.

Disputes should be resolved at the lowest level possible, beginning with the Grants Management Specialist, the Grants Team Lead, and the Grants Chief. If an agreement cannot be reached, the Associate Administrator will serve as the dispute resolution official, whose decision will be final.

Issued in Washington, DC, on February 8, 2019 under authority delegated in 49 CFR part 1.97.

Howard R. Elliott,

Administrator, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2019–02293 Filed 2–13–19; 8:45 am]

BILLING CODE 4910–60–P

Proposed Rules

Federal Register

Vol. 84, No. 31

Thursday, February 14, 2019

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

FEDERAL RESERVE SYSTEM

12 CFR Parts 238 and 252

[Docket No. R–1648]

RIN 7100–AF37

Regulations LL and YY; Amendments to the Company-Run and Supervisory Stress Test Rules

AGENCY: Board of Governors of the Federal Reserve System (Board).

ACTION: Notice of proposed rulemaking with request for comment.

SUMMARY: The Board is requesting comment on a proposed rule that would amend the Board's company-run stress test and supervisory stress test rules, consistent with section 401 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA). Specifically, the proposed rule would revise the minimum threshold for state member banks to conduct stress tests from $10 billion to $250 billion, revise the frequency with which state member banks with assets greater than $250 billion would be required to conduct stress tests, and remove the adverse scenario from the list of required scenarios. The proposed rule would also make conforming changes to the Board's company-run and supervisory stress test requirements for bank holding companies, U.S. intermediate holding companies of foreign banking organizations, and nonbank financial companies supervised by the Board, the Board's Policy Statement on the Scenario Design Framework for Stress Testing, and the stress testing requirements for certain savings and loan holding companies that were proposed for public comment on October 31, 2018. Finally, the proposed rule would revise the scope of applicability of the company-run stress testing requirements for certain savings and loan holding companies that were proposed for public comment on October 31, 2018.

DATES: Comments on the notice of proposed rulemaking must be received by February 19, 2019.

ADDRESSES: You may submit comments, identified by Docket No. R–1648 and RIN AF 37 by any of the following methods:

- *Agency Website: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.aspx.*
- *Email: regs.comments@federalreserve.gov.* Include the docket number and RIN number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Address to Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments will be made available on the Board's website at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room 146, 1709 New York Avenue NW, between 9:00 a.m. and 5:00 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Lisa Ryu, Associate Director, (202) 263–4833, Constance Horsley, Deputy Associate Director, (202) 452–5239, Christine Graham, Manager, (202) 452–3005, Page Conkling, Senior Supervisory Financial Analyst, (202) 912–4647, or Joseph Cox, Senior Supervisory Financial Analyst, (202) 452–3216, Division of Banking Supervision and Regulation; Benjamin W. McDonough, Assistant General Counsel, (202) 452–2036, Julie Anthony, Senior Counsel, (202) 475–6682, or Asad Kudiya, Counsel, Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551. Users of Telecommunication Device for Deaf (TDD) only, call (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

The Board has long held the view that a banking organization should operate with capital levels well above its minimum regulatory capital ratios and commensurate with its risk profile. A banking organization should also have internal processes for assessing its capital adequacy that reflects a full understanding of its risks and ensure that it holds capital commensurate with those risks. Stress testing is one tool that helps both bank supervisors and a banking organization measure the sufficiency of capital available to support the banking organization's operations throughout periods of stress.[1]

Prior to the passage of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA),[2] section 165(i) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act)[3] required each state member bank with total consolidated assets of more than $10 billion to conduct annual stress tests. In addition, section 165 required the Board to issue regulations that establish methodologies for state member banks conducting their stress test, which were required to include at least three different stress-testing scenarios: ''baseline,'' ''adverse,'' and ''severely adverse.''[4] In October 2012, the Board published in the **Federal Register** rules implementing the Dodd-Frank Act stress testing requirements, which established company-run stress test requirements for state member banks.[5]

Section 401 of EGRRCPA amended certain aspects of the stress testing requirements applicable to state member banks in section 165(i) of the Dodd-Frank Act.[6] Specifically, after 18 months, section 401 of EGRRCPA raises the minimum asset threshold for application of the stress testing requirement from $10 billion to $250 billion in total consolidated assets; revises the requirement for state member banks to conduct stress tests ''annually,'' and instead requires them to conduct stress tests ''periodically;'' and no longer requires the stress test to include an ''adverse'' scenario, thus

[1] A full assessment of a company's capital adequacy must take into account a range of risk factors, including those that are specific to a particular industry or company.

[2] Public Law 115–174, 132 Stat. 1296 (2018).

[3] Public Law 111–203, 124 Stat. 1376 (2010), codified at 12 U.S.C. 5365.

[4] 12 U.S.C. 5365(i)(2)(C).

[5] 77 FR 62396 (October 12, 2012).

[6] Public Law 115–174, 132 Stat. 1296–1368 (2018).

reducing the number of required stress test scenarios from three to two.[7]

II. Description of the Proposed Rule

The Board is proposing to revise the Board's stress testing rules applicable to state member banks (12 CFR part 252, subpart B), consistent with the amendments made by section 401 of EGRRCPA (the proposed rule or proposal). The proposal would also make conforming changes to the supervisory stress testing and company-run stress testing requirements applicable to bank holding companies, U.S. intermediate holding companies of foreign banking organizations, and any nonbank financial company supervised by the Board (12 CFR part 252, subparts E and F), the Board's Policy Statement on the Scenario Design Framework for Stress Testing (12 CFR part 252, appendix A), and the stress testing requirements for certain savings and loan holding companies that were proposed for public comment on October 31, 2018.[8] The proposal also would revise the scope of applicability of the company-run stress testing requirements for certain savings and loan holding companies that were proposed for public comment on October 31, 2018. Finally, the proposal would make certain technical edits to these rules.

In preparing the proposal, the Board has coordinated closely with the FDIC and the OCC to help to ensure that the company-run stress testing regulations are consistent and comparable across depository institutions and depository institution holding companies and to address any burden that may be associated with having multiple entities within one organizational structure having to meet different stress testing requirements.

A. Minimum Asset Threshold for State Member Banks

As described above, section 401 of EGRRCPA amends section 165 of the Dodd-Frank Act by raising the minimum asset threshold for state member banks required to conduct company-run stress tests from $10 billion to $250 billion. Consistent with EGRRCPA, the proposal would raise this threshold such that only state member banks with total consolidated assets greater than $250 billion would be required to conduct stress tests.

B. Frequency of Stress Testing for State Member Banks

Section 401 of EGRRCPA also revised the requirement under section 165 of the Dodd-Frank Act for state member banks to conduct stress tests, changing the required frequency from ''annual'' to ''periodic.'' Under the proposal, state member banks with assets greater than $250 billion generally would no longer be required conduct stress tests annually, rather they would be required to conduct stress tests once every other year.

Post-crisis financial regulations have resulted in substantial gains in resiliency for individual firms and for the financial system as a whole, including requiring firms to hold higher amounts of better quality capital. Based on the Board's experience overseeing and reviewing the results of company-run stress testing over more than five years, the Board believes that a two-year stress testing cycle generally would be appropriate for certain state member banks. Specifically, the state member banks that would be subject to a two-year stress testing cycle under the proposal would not be the subsidiaries of larger, more complex firms, which can present greater risk and therefore merit closer monitoring. As discussed below, state member banks that are subsidiaries of larger, more complex firms, would continue to have to conduct stress testing on an annual basis. The Board expects this level of frequency would provide the Board and the state member bank with information that is sufficient to satisfy the purposes of stress testing, including: assisting in an overall assessment of the state member bank's capital adequacy, identifying downside risks and the potential impact of adverse conditions on the state member bank's capital adequacy, and determining whether additional analytical techniques and exercises are appropriate for the state member bank to employ in identifying, measuring, and monitoring risks to the soundness of the state member bank. In addition, the Board would continue to review the state member bank's stress testing processes and procedures.

Under the proposed rule, all state member banks that would conduct stress tests every other year would be required to conduct stress tests in the same even numbered year (*i.e.,* the reporting years for these state member banks would be synchronized). By requiring these state member banks to conduct their stress tests in the same year, the proposal would continue to allow the Board to make comparisons across state member banks for supervisory purposes and assess macroeconomic trends and risks to the banking industry.

As an exception to the two-year cycle, state member banks that are subsidiaries of U.S. global systemically important bank holding companies or bank holding companies that have $700 billion or more in total assets or cross-jurisdictional activity of $75 billion or more would be required to conduct a stress test on an annual basis. As discussed in the Board's October 31, 2018 proposal,[9] U.S. global systemically important bank holding companies and bank holding companies with $700 or more in total assets or $75 billion or more in cross-jurisdictional activity would be required to conduct stress tests on an annual basis. The proposed requirement for these bank holding companies to conduct stress tests on an annual basis reflects their heightened risk profile, relative to smaller, less complex firms. Requiring the depository institution subsidiaries of these holding companies to a conduct stress test on an annual basis would reflect the risk profile of the overall banking organization and align with the Board's long-standing policy of applying similar standards to holding companies and their subsidiary banks.

Under the proposal, a state member bank that was subject to a two-year stress test cycle would become subject to an annual stress test if, for example, the parent bank holding company of the bank became a U.S. global systemically important bank holding company or a holding company with $700 billion or more in total assets or cross-

[7] The amendments made by section 401 of EGRRCPA applicable to state member banks are not effective until eighteen months after the enactment of EGRRCPA. EGRRCPA section 401(d)(1). On July 6, 2018, the OCC, jointly with the Board and the FDIC, extended the deadline for all regulatory requirements related to company-run stress testing for depository institutions with average total consolidated assets of less than $100 billion until November 25, 2019. *See* Interagency statement regarding impact of the Economic Growth, Regulatory Relief, and Consumer Protection Act, July 6, 2018, available at *https://www.occ.treas.gov/news-issuances/news-releases/2018/nr-ia-2018-69a.pdf.*

[8] On October 31, 2018, the Board approved two notices of proposed rulemaking that would establish a revised framework for applying prudential standards to large U.S. banking organizations. *See www.federalreserve.gov/newsevents/pressreleases/bcreg20181031a.htm.* Currently, savings and loan holding companies with more than $10 billion in total consolidated assets are subject to the Board's company run stress test rules (12 CFR part 252, subpart B). Under the proposal, certain savings and loan holding companies with more than $100 billion in assets would be subject to supervisory stress testing and company-run stress test requirements.

[9] *See www.federalreserve.gov/newsevents/pressreleases/bcreg20181031a.htm.* Under the board's October 31, 2018 proposal, U.S. global systemically important bank holding companies would be subject to Category I standards while bank holding companies with $700 billion or more in total assets or $75 billion or more in cross-jurisdictional activity would be subject to Category II standards.

jurisdictional activity of $75 billion or more. The proposal would not establish a transition period in these cases. Accordingly, a state member bank that becomes an annual stress test firm would be required to begin stress testing annually as of the next year. The Board would expect state member banks to anticipate and plan for this development.

C. Removal of ''Adverse'' Scenario for State Member Banks

As discussed above, section 401 of EGRRCPA amends section 165(i) of the Dodd-Frank Act to no longer require the Board to include an ''adverse'' stress-testing scenario in the company-run stress test, reducing the number of required company-run stress test scenarios from three to two.

The ''baseline'' scenario is a set of conditions that affect the U.S. economy or the financial condition of the state member bank, and that reflect the consensus views of the economic and financial outlook, and the ''severely adverse'' scenario is a more severe set of conditions and the most stringent of the scenarios. Because the ''baseline'' and ''severely adverse'' scenarios are designed to cover the full range of expected and stressful conditions, the ''adverse'' stress-testing scenario has provided limited incremental information to the Board and market participants. Accordingly, the proposal would maintain the requirement for state member banks to conduct company-run stress tests under both a ''baseline'' and ''severely adverse'' stress-testing scenario. In addition, the proposal would redefine the ''severely adverse'' scenario to mean a set of conditions that affect the U.S. economy or the financial condition of a state member bank that overall are significantly more severe than those associated with the baseline scenario and may include trading or other additional components.

D. Removal of ''Adverse'' Scenario for All Other Stress Testing Requirements

The Board's company-run stress testing and supervisory stress testing requirements applicable to bank holding companies, U.S. intermediate holding companies of foreign banking organizations, and any nonbank financial company supervised by the Board currently require the inclusion of an ''adverse'' scenario in the stress test. In addition, the stress testing requirements for certain savings and loan holding companies that were proposed for public comment on October 31, 2018, also would require the inclusion of an ''adverse'' scenario.[10]

As discussed above, section 401 of EGRRCPA amends section 165(i)(2) of the Dodd-Frank Act to no longer require the Board to include an ''adverse'' stress-testing scenario in the company-run stress test. Similarly, section 401 of EGRRCPA amends section 165(i)(1) to no longer require the Board to include an ''adverse'' scenario in the supervisory stress tests that the Board is required to conduct, reducing the number of supervisory stress test scenarios from three to two.

Consistent with the changes made by section 401 of EGRRCPA, and for the reasons set forth above regarding why the inclusion of the ''adverse'' scenario is unnecessary, the proposal would remove the ''adverse'' scenario as a required scenario for all of the Board's current and proposed company-run and supervisory stress testing requirements, and revise the definition of the ''severely adverse'' scenario. In addition, the proposal would make conforming changes to the Board's Policy Statement on the Scenario Design Framework for Stress Testing to reflect the removal of the adverse scenario.

E. Review by Board of Directors

Section 252.15 of the Board's stress testing rule for state member banks provides that ''[t]he board of directors, or a committee thereof, of a state member bank must review and approve the policies and procedures of the stress testing processes as frequently as economic conditions or the condition of the company may warrant, but no less than annually.'' Section 238.144 of Regulation LL in the Board's October 31, 2018, proposal and § 252.56 of Regulation YY include similar approval language. The proposal would revise the frequency of these requirements from ''annual'' to ''no less than each year a stress test is conducted'' in order to make review by the board of directors consistent with the supervised firm's stress testing cycle.

F. Removal of Transition Language

The proposal would remove certain transition language present in the Board's stress testing rule that is no longer current. For example, the proposal would strike paragraph (a)(2) of § 252.14 of part 252, which provides the required timing of the stress tests for each stress test cycle prior to October 1, 2014.

G. Scope of Applicability for Savings and Loan Holding Companies

The proposal would revise the company-run stress testing requirements for covered savings and loan holding companies included in the Board's October 31, 2018, proposal. As part of the October 31, 2018 proposal, the Board generally proposed to apply prudential standards to certain covered savings and loan holding companies using those standards for determining prudential standards for large U.S. banking organizations. Covered savings and loan holding companies are those large savings and loan holding companies other than those substantially engaged in insurance underwriting or commercial activities.[11] Section 165(i)(2) of the Dodd-Frank Act, as amended by EGRRCPA, requires all financial companies that have total consolidated assets of more than $250 billion to conduct periodic stress tests. Consistent with EGRRCPA, the Board is proposing to revise the scope of applicability of the company-run stress testing requirements proposed on October 31, 2018, to include all savings and loan holding companies that meet the thresholds for either a Category II or a Category III banking organization in the proposed § 238.10 of Regulation LL.

The proposal also would amend the proposed company-run stress test requirements to maintain the existing transition provision that provides that a savings and loan holding company would not be required to conduct its first stress test until after it is subject to minimum capital requirements.

III. Request for Comment

The Board invites comment on all aspects of this proposed rule, including the following questions:

1. The proposal would require a state member bank that is consolidated under a holding company that is required to conduct a stress test at least once every calendar year to also conduct a stress test at least once every calendar year. What are the advantages and disadvantages of requiring a state member bank to conduct a stress test at the same frequency as, or at a different frequency than, its holding company?

2. What if any criteria should the Board consider for differentiating the frequency of stress tests (annual versus biennial) among depository institutions that have significantly different risk profiles and that are not consolidated under a holding company (*e.g.,* differentiate frequency based on asset size, other risk indicators), and why?

[10] *See https://www.federalreserve.gov/newsevents/pressreleases/bcreg20181031a.htm.*

[11] *See* 12 CFR 217.2 (defining a covered savings and loan holding company).

3. What alternative frequency to the proposed biennial stress testing requirement should the Board consider and why?

4. Should the Board establish a transition period for state member banks that are already required to stress test and that move from a biennial stress testing requirement to an annual stress testing requirement, and if so, why?

IV. Regulatory Analysis

A. Riegle Community Development and Regulatory Improvement Act (RCDRIA)

Section 302 of RCDRIA generally requires that regulations prescribed by Federal banking agencies which impose additional reporting, disclosures or other new requirements on insured depository institutions take effect on the first day of a calendar quarter which begins on or after the date on which the regulation is published in final form unless the agency determines, for good cause published with the regulation, that the regulation should become effective before such time.

The proposed rule imposes no additional reporting, disclosure, or other requirements on insured depository institutions, including small depository institutions, nor on the customers of depository institutions. The proposed rule would raise the minimum asset threshold for state member banks that would be required to conduct a stress test from $10 billion to $250 billion, would revise the frequency with which state member banks with assets greater than $250 billion would be required to conduct stress tests, and would reduce the number of required stress test scenarios from three to two. The requirement to conduct, report, and publish a company-run stress testing is a previously existing requirement imposed by section 165 of the Dodd-Frank Act. In connection with determining an effective date for the proposed rule, the Board invites comment on any administrative burdens that the proposed rule would place on depository institutions, including small depository institutions, and customers of depository institutions.

B. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* the Board is publishing an initial regulatory flexibility analysis of the proposal. The RFA requires each federal agency to prepare an initial regulatory flexibility analysis in connection with the promulgation of a proposed rule, or certify that the proposed rule will not have a significant economic impact on a substantial number of small entities.[12] Under regulations issued by the SBA, a small entity includes a bank, bank holding company, or savings and loan holding company with assets of $550 million or less (small entity).[13] Based on the Board's analysis, and for the reasons stated below, the Board believes that this proposed rule will not have a significant economic impact on a substantial of number of small entities.

As discussed in the Supplementary Information, the Board is proposing to adopt amendments to Regulation YY and LL to reflect revisions made by section 401 of EGRRCPA to section 165 of the Dodd-Frank Act. Specifically, the proposal would affect the regulatory requirements that apply to state member banks with $10 billion or more in total consolidated assets, along with bank holding companies and requirements that have been proposed to apply to savings and loan holding companies with $100 billion or more in total consolidated assets.

The proposal would not apply to small entities. Companies that are affected by the proposal, include state member banks with $10 billion or more in total consolidated assets, along with bank holding companies and savings and loan holding companies with $100 billion or more in total consolidated assets and, therefore, substantially exceed the $550 million asset threshold at which a banking entity is considered a ''small entity'' under SBA regulations.

The proposal would not impose any new reporting, recordkeeping, or other compliance requirements on banking organizations. Because the proposal would increase the minimum asset threshold for state member banks to conduct stress tests, the proposal would reduce the amount of state member banks subject to the Board's stress test rules. Moreover, as discussed above, the proposal does not apply to small entities and, therefore, the Board expects that the proposed rule will not impose any reporting, recordkeeping, or other compliance costs on small entities.

The Board does not believe that the proposal duplicates, overlaps, or conflicts with any other Federal rules.

In light of the foregoing, the Board does not believe that the proposal, if adopted in final form, would have a significant economic impact on a substantial number of small entities supervised by the Board and does not believe there are any significant alternatives to the proposal that would reduce the impact of the proposal. Nonetheless, the Board seeks comment on whether the proposal would impose undue burdens on, or would have unintended consequences for, small banking organizations, and whether there are ways such potential burdens or consequences could be minimized in a manner consistent with the purposes of the proposal.

C. Paperwork Reduction Act of 1995

Certain provisions of the proposed rule contain a ''collection of information'' 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 control numbers are 7100–0350, which will be extended for three years with revision, and 7100–NEW. 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 Reserve Desk Officer.

Proposed Information Collections

(1) *Title of Information Collection:* Reporting, Recordkeeping, and

[12] *See* 5 U.S.C. 603, 604, and 605.

[13] *See* 13 CFR 121.201.

Disclosure Requirements Associated with Regulation YY.

Agency Form Number: FR YY.

OMB control number: 7100–0350.

Frequency: Annual, semiannual, and quarterly.

Affected Public: Businesses or other for-profit.

Respondents: State member banks, U.S. bank holding companies, savings and loan holding companies, nonbank financial companies, foreign banking organizations, U.S. intermediate holding companies, foreign savings and loan holding companies, and foreign nonbank financial companies supervised by the Board.

Description of the Information Collection: Section 252.16 of Regulation YY requires a state member bank that has average total consolidated assets of $250 billion or more to report the results of the stress test to the Board by April 5, unless that time is extended by the Board in writing, in a manner consistent with the requirements of the section.

Current Actions: The proposed rule would raise the minimum threshold for state member banks to conduct stress tests from $10 billion to $250 billion. As a result, the number of respondents filing the reporting requirements in § 252.16 of Regulation YY would decrease to one. The reporting requirements for § 252.57 of Regulation YY are being revised in the Capital Assessments and Stress Testing (FR Y–14; OMB No. 7100–0341).[14]

Legal authorization and confidentiality: This information collection is authorized by section 165(i)(2) of the Dodd-Frank Act. The obligation of covered institutions to report this information is mandatory.

The information collected in these reports is collected as part of the Board's supervisory process, and therefore is afforded confidential treatment pursuant to exemption 8 of the Freedom of Information Act (FOIA) (5 U.S.C. 552(b)(8)). In addition, individual respondents may request that certain data be afforded confidential treatment pursuant to exemption 4 of FOIA if the data has not previously been publicly disclosed and the release of the data would likely cause substantial harm to the competitive position of the respondent (5 U.S.C. 552(b)(4)). Determinations of confidentiality based on exemption 4 of FOIA would be made on a case-by-case basis.

Current estimated annual burden hours: 119,264.

Estimated annual burden hours due to proposed revisions: (1,400).

[14] See 83 FR 61408 (November 29, 2018).

Proposed estimated annual burden hours: 117,864.

(2) *Title of Information Collection:* Disclosure Requirements Associated with Regulation LL.

Agency Form Number: FR LL.

OMB control number: 7100–NEW.

Frequency: Annual, biennial.

Affected Public: Businesses or other for-profit.

Respondents: Savings and loan holding companies.

Description of the Information Collection: The proposed § 238.146 of Regulation LL, which was proposed as part of the Board's October 31 proposal regarding prudential standards for large bank holding companies and savings and loan holdings companies[15] requires certain savings and loan holding companies with $100 billion or more in assets to publicly disclose a summary of the results of the stress test conducted pursuant to proposed § 238.143 of Regulation LL in a manner consistent with the requirements of proposed § 238.146 of Regulation LL.

Current Actions: The proposed § 238.146 of Regulation LL would implement disclosure requirements that were previously proposed for savings and loan holding companies. The reporting requirements for proposed §§ 238.133 and 238.145 of Regulation LL are being revised in the Capital Assessments and Stress Testing (FR Y–14; OMB No. 7100–0341).[16]

Legal authorization and confidentiality: This information collection is authorized by section 10 of the Home Owners' Loan Act (HOLA) and section 165(i)(2) of the Dodd-Frank Act. The obligation of covered institutions to report this information is mandatory. This information would be disclosed publicly and, as a result, no issue of confidentiality is raised.

Estimated number of respondents: 1.

Estimated average hours per response: 200 for initial setup and 80 for ongoing.

Estimated annual burden hours: 140.

D. Plain Language

Section 722 of the Gramm-Leach-Bliley Act (Pub. L. 106–102, 113 Stat. 1338, 1471, 12 U.S.C. 4809) requires the federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The Board has sought to present the proposed rule in a simple and straightforward manner, and invites comment on the use of plain language.

For example:

- Has the Board organized the material to suit your needs? If not, how could the proposed rule be more clearly stated?
- Are the requirements in the proposed rule clearly stated? If not, how could the proposed 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 make the regulation easier to understand?
- Would more, but shorter, sections be better? If so, which sections should be changed?
- What other changes can the Board incorporate to make the regulation easier to understand?

[15] See *www.federalreserve.gov/newsevents/pressreleases/bcreg20181031a.htm.*

[16] See 83 FR 61408 (November 29, 2018).

List of Subjects

12 CFR Part 238

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

12 CFR Part 252

Administrative practice and procedure, Banks, Banking, Capital planning, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities, Stress testing.

Authority and Issuance

For the reasons stated in the Supplementary Information, the Board of Governors of the Federal Reserve System proposes to amend 12 CFR parts 238 and 252 as follows:

PART 238—SAVINGS AND LOAN HOLDING COMPANIES (REGULATION LL)

■ 1. The authority citation for part 238 continues to read as follows:

Authority: 5 U.S.C. 552, 559; 12 U.S.C. 1462, 1462a, 1463, 1464, 1467, 1467a, 1468, 1813, 1817, 1829e, 1831i, 1972; 15 U.S.C. 78 l.

Subpart O—Supervisory Stress Test Requirements for Covered Savings and Loan Holding Companies

■ 2. Section 238.130, which was proposed to be added at 83 FR 61408 (November 29, 2018), is further amended by:

■ a. Revising the definitions of *Advanced approaches;*

■ b. Removing the definition *Adverse scenario;* and

■ c. Revising the definitions *Baseline scenario, Scenarios,* and *Severely adverse scenario.*

The revisions read as follows:

§ 238.130 Definitions.

* * * * *

Advanced approaches means the risk-weighted assets calculation methodologies at 12 CFR part 217, subpart E, as applicable.

Baseline scenario means a set of conditions that affect the U.S. economy or the financial condition of a covered company and that reflect the consensus views of the economic and financial outlook.

* * * * *

Scenarios are those sets of conditions that affect the U.S. economy or the financial condition of a covered company that the Board annually determines are appropriate for use in the supervisory stress tests, including, but not limited to, baseline and severely adverse scenarios.

Severely adverse scenario means a set of conditions that affect the U.S. economy or the financial condition of a covered company and that overall are significantly more severe than those associated with the baseline scenario and may include trading or other additional components.

* * * * *

■ 3. Section 238.132, which was proposed to be added at 83 FR 61408 (November 29, 2018), is further amended by revising paragraph (b) to read as follows:

§ 238.132 Analysis conducted by the Board.

* * * * *

(b) *Economic and financial scenarios related to the Board's analysis.* The Board will conduct its analysis using a minimum of two different scenarios, including a baseline scenario and a severely adverse scenario. The Board will notify covered companies of the scenarios that the Board will apply to conduct the analysis for each stress test cycle to which the covered company is subject by no later than February 15 of that year, except with respect to trading or any other components of the scenarios and any additional scenarios that the Board will apply to conduct the analysis, which will be communicated by no later than March 1 of that year.

* * * * *

■ 4. Section 238.134, which was proposed to be added at 83 FR 61408 (November 29, 2018), is further amended by revising paragraph (a) to read as follows:

§ 238.134 Review of the Board's analysis; publication of summary results.

(a) *Review of results.* Based on the results of the analysis conducted under this subpart, the Board will conduct an evaluation to determine whether the covered company has the capital, on a total consolidated basis, necessary to absorb losses and continue its operation by maintaining ready access to funding, meeting its obligations to creditors and other counterparties, and continuing to serve as a credit intermediary under baseline and severely adverse scenarios, and any additional scenarios.

* * * * *

Subpart P—Company-Run Stress Test Requirements for Savings and Loan Holding Companies

■ 5. Section 238.141, which was proposed to be added on 83 FR 61408 (November 29, 2018), is further amended by:

■ a. Revising the definition *Advanced approaches;*

■ b. Removing the definition *Adverse scenario;* and

■ c. Revising the definitions *Baseline scenario, Covered company, Regulatory capital ratio, Scenarios,* and *Severely adverse scenario.*

The revisions read as follows:

§ 238.141 Definitions.

Advanced approaches means the risk-weighted assets calculation methodologies at 12 CFR part 217, subpart E, as applicable.

Baseline scenario means a set of conditions that affect the U.S. economy or the financial condition of a covered company and that reflect the consensus views of the economic and financial outlook.

* * * * *

Covered company means:

(1) A savings and loan holding company identified as a Category II banking organization pursuant to § 238.10; or

(2) A savings and loan holding company identified as a Category III banking organization pursuant to § 238.10.

* * * * *

Regulatory capital ratio means a capital ratio for which the Board has established minimum requirements for the savings and loan holding company by regulation or order, including, as applicable, the company's regulatory capital ratios calculated under 12 CFR part 217 and the deductions required under 12 CFR 248.12; except that the company shall not use the advanced approaches to calculate its regulatory capital ratios.

Scenarios are those sets of conditions that affect the U.S. economy or the financial condition of a covered company that the Board annually or biennially determines are appropriate for use in the company-run stress tests, including, but not limited to, baseline and severely adverse scenarios.

Severely adverse scenario means a set of conditions that affect the U.S. economy or the financial condition of a covered company and that overall are significantly more severe than those associated with the baseline scenario and may include trading or other additional components.

* * * * *

■ 6. Section 238.142, which was proposed to be added at 83 FR 61408 (November 29, 2018), is further revised to read as follows:

§ 238.142 Applicability.

(a) *Scope*—(1) *Applicability.* Except as provided in paragraph (b) of this section, this subpart applies to any covered company, which includes:

(i) Any savings and loan holding company identified as a Category II banking organization pursuant to § 238.10; and

(ii) Any savings and loan holding company identified as a Category III banking organization pursuant to § 238.10.

(2) *Ongoing applicability.* A savings and loan holding company (including any successor company) that is subject to any requirement in this subpart shall remain subject to any such requirement unless and until the savings and loan holding company:

(i) Is not a savings and loan holding company identified as a Category II banking organization pursuant to § 238.10; and

(ii) Is not a savings and loan holding company identified as a Category III banking organization pursuant to § 238.10.

(b) *Transitional arrangements.* (1) A savings and loan holding company that is subject to minimum capital requirements and that becomes a covered company on or before September 30 of a calendar year must comply with the requirements of this subpart beginning on January 1 of the second calendar year after the savings and loan holding company becomes a covered company, unless that time is extended by the Board in writing.

(2) A savings and loan holding company that is subject to minimum capital requirements and that becomes a covered company after September 30 of a calendar year must comply with the requirements of this subpart beginning on January 1 of the third calendar year

after the savings and loan holding company becomes a covered company, unless that time is extended by the Board in writing.

■ 7. Section 238.143, which was proposed to be added at 83 FR 61408 (November 29, 2018), is further amended by revising paragraphs (a), (b)(2) and (b)(4)(i) to read as follows:

§ 238.143 Stress test.

(a) *Stress test requirement*—(1) *In general.* A covered company must conduct a stress test as required under this subpart.

(2) *Frequency.* (i) Except as provided in paragraph (a)(2)(ii) of this section, a covered company must conduct an annual stress test. The stress test must be conducted by April 5 of each calendar year based on data as of December 31 of the preceding calendar year, unless the time or the as-of date is extended by the Board in writing.

(ii) A savings and loan holding company identified as a Category III banking organization pursuant to § 238.10 must conduct a biennial stress test. The stress test must be conducted by April 5 of each calendar year ending in an even number, based on data as of December 31 of the preceding calendar year, unless the time or the as-of date is extended by the Board in writing.

(b) * * *

(2) *Additional components.* (i) The Board may require a covered company with significant trading activity, as determined by the Board and specified in the Capital Assessments and Stress Testing report (FR Y–14), to include a trading and counterparty component in its severely adverse scenario in the stress test required by this section. The data used in this component must be as-of a date selected by the Board between October 1 of the previous calendar year and March 1 of the calendar year in which the stress test is performed pursuant to this section, and the Board will communicate the as-of date and a description of the component to the company no later than March 1 of the calendar year in which the stress test is performed pursuant to this section.

(ii) The Board may require a covered company to include one or more additional components in its severely adverse scenario in the stress test required by this section based on the company's financial condition, size, complexity, risk profile, scope of operations, or activities, or risks to the U.S. economy.

* * * * *

(4) * * *

(i) *Notification of additional component.* If the Board requires a covered company to include one or more additional components in its severely adverse scenario under paragraph (b)(2) of this section or to use one or more additional scenarios under paragraph (b)(3) of this section, the Board will notify the company in writing. The Board will provide such notification no later than December 31 of the preceding calendar year. The notification will include a general description of the additional component(s) or additional scenario(s) and the basis for requiring the company to include the additional component(s) or additional scenario(s).

* * * * *

■ 8. Section 238.144, which was proposed to be added on 83 FR 61408 (November 29, 2018), is further amended by revising paragraph (c)(2) to read as follows:

§ 238.144 Methodologies and practices.

* * * * *

(c) * * *

(2) *Oversight of stress testing processes.* The board of directors, or a committee thereof, of a covered company must review and approve the policies and procedures of the stress testing processes as frequently as economic conditions or the condition of the covered company may warrant, but no less than each year a stress test is conducted. The board of directors and senior management of the covered company must receive a summary of the results of any stress test conducted under this subpart.

* * * * *

PART 252—ENHANCED PRUDENTIAL STANDARDS (REGULATION YY)

■ 9. The authority citation for part 252 continues to read as follows:

Authority: 12 U.S.C. 321–338a, 481–486, 1467a, 1818, 1828, 1831n, 1831o, 1831p–l, 1831w, 1835, 1844(b), 1844(c), 3101 *et seq.,* 3101 note, 3904, 3906–3909, 4808, 5361, 5362, 5365, 5366, 5367, 5368, 5371.

■ 10. Revise the heading for subpart B to read as follows:

Subpart B—Company-Run Stress Test Requirements for State Member Banks With Total Consolidated Assets Over $250 Billion

■ 11. Section 252.11, which was proposed to be revised at 83 FR 61408 (November 29, 2018), is further amended by revising the section heading and paragraph (b) to read as follows:

§ 252.11 Authority and purpose.

* * * * *

(b) *Purpose.* This subpart implements section 165(i)(2) of the Dodd-Frank Act (12 U.S.C. 5365(i)(2)), which requires state member banks with total consolidated assets of greater than $250 billion to conduct stress tests. This subpart also establishes definitions of stress tests and related terms, methodologies for conducting stress tests, and reporting and disclosure requirements.

■ 12. Section 252.12, which was proposed to be revised at 83 FR 61408 (November 29, 2018), is further amended by removing and reserving paragraph (b) and revising paragraphs (c), (g), (n), (o), and (p) to read as follows:

§ 252.12 Definitions.

* * * * *

(b) [Reserved]

(c) *Asset threshold* means a state member bank with average total consolidated assets of greater than $250 billion.

* * * * *

(g) *Capital action* has the same meaning as in § 225.8(d) of the Board's Regulation Y (12 CFR 225.8(d)).

* * * * *

(n) *Regulatory capital ratio* means a capital ratio for which the Board has established minimum requirements for the state member bank by regulation or order, including, as applicable, the state member bank's regulatory capital ratios calculated under 12 CFR part 217 and the deductions required under 12 CFR 248.12; except that the state member bank shall not use the advanced approaches to calculate its regulatory capital ratios.

* * * * *

(o) *Scenarios* are those sets of conditions that affect the U.S. economy or the financial condition of a state member bank that the Board annually determines are appropriate for use in the company-run stress tests, including, but not limited to baseline and severely adverse scenarios.

(p) *Severely adverse scenario* means a set of conditions that affect the U.S. economy or the financial condition of a state member bank and that overall are significantly more severe than those associated with the baseline scenario and may include trading or other additional components.

* * * * *

■ 13. Section 252.13, which was proposed to be revised at 83 FR 61408 (November 29, 2018), is further revised to read as follows:

§ 252.13 Applicability.

(a) *Scope*—(1) *Applicability.* Except as provided in paragraph (b) of this section, this subpart applies to any state

member bank with average total consolidated assets (as defined in § 252.12(d)) of greater than $250 billion.

(2) *Ongoing applicability.* A state member bank (including any successor company) that is subject to any requirement in this subpart shall remain subject to any such requirement unless and until its total consolidated assets fall below $250 billion for each of four consecutive quarters, as reported on the Call Report and effective on the as-of date of the fourth consecutive Call Report.

(b) *Transition period.* (1) A state member bank that exceeds the asset threshold for the first time on or before March 31 of a given year, must comply with the requirements of this subpart beginning on January 1 of the following year, unless that time is extended by the Board in writing.

(2) A state member bank that exceeds the asset threshold for the first time after March 31 of a given year must comply with the requirements of this subpart beginning on January 1 of the second year following that given year, unless that time is extended by the Board in writing.

■ 14. Section 252.14, which was proposed to be amended at 83 FR 61408 (November 29, 2018), is further amended by revising the section heading and paragraphs (a), (b)(2)(i), and (b)(4)(i) and (ii) to read as follows:

§ 252.14 Stress test.

(a) *General requirements*—(1) *General.* Except as provided in paragraph (a)(2):

(i) A state member bank that is a covered company subsidiary must conduct a biennial stress test. The stress test must be conducted by April 5 of each calendar year ending in an even number, based on data as of December 31 of the preceding calendar year, unless the time or the as-of date is extended by the Board in writing; and

(ii) A state member bank that is not a covered company subsidiary must conduct a biennial stress test. The stress test must be conducted by July 31 of each calendar year ending in an even number, based on data as of December 31 of the preceding calendar year, unless the time or the as-of date is extended by the Board in writing.

(2) *Annual stress test for certain state member banks.* A state member bank that is a subsidiary of a global systemically important BHC or a Category II bank holding company must conduct an annual stress test. The stress test must be conducted by April 5 of each calendar year, based on data as of December 31 of the preceding calendar year, unless the time or the as-of date is extended by the Board in writing.

(b) * * *

(2) * * *

(i) The Board may require a state member bank with significant trading activity, as determined by the Board and specified in the Capital Assessments and Stress Testing report (FR Y–14), to include a trading and counterparty component in its severely adverse scenario in the stress test required by this section. The Board may also require a state member bank that is subject to 12 CFR part 217, subpart F or that is a subsidiary of a bank holding company that is subject to either this paragraph (b)(2) or § 252.54(b)(2)(i) to include a trading and counterparty component in the state member bank's severely adverse scenario in the stress test required by this section. The data used in this component must be as of a date between January 1 and March 1 of that calendar year selected by the Board, and the Board will communicate the as-of date and a description of the component to the company no later than March 1 of that calendar year.

* * * * *

(4) * * *

(i) *Notification of additional component.* If the Board requires a state member bank to include one or more additional components in its severely adverse scenario under paragraph (b)(2) of this section or to use one or more additional scenarios under paragraph (b)(3) of this section, the Board will notify the company in writing by December 31.

(ii) *Request for reconsideration and Board response.* Within 14 calendar days of receipt of a notification under this paragraph (b)(4), the state member bank may request in writing that the Board reconsider the requirement that the company include the additional component(s) or additional scenario(s), including an explanation as to why the request for reconsideration should be granted. The Board will respond in writing within 14 calendar days of receipt of the company's request.

* * * * *

■ 15. Section 252.15, which was proposed to be revised at 83 FR 61408 (November 29, 2018), is further amended by revising paragraphs (b)(1) and (2) to read as follows:

§ 252.15 Methodologies and practices.

* * * * *

(b) * * *

(1) *In general.* The senior management of a state member bank must establish and maintain a system of controls, oversight, and documentation, including policies and procedures, that are designed to ensure that its stress testing processes are effective in meeting the requirements in this subpart. These policies and procedures must, at a minimum, describe the company's stress testing practices and methodologies, and processes for validating and updating the company's stress test practices and methodologies consistent with applicable laws and regulations.

(2) *Oversight of stress testing processes.* The board of directors, or a committee thereof, of a state member bank must review and approve the policies and procedures of the stress testing processes as frequently as economic conditions or the condition of the company may warrant, but no less than each year a stress test is conducted. The board of directors and senior management of the state member bank must receive a summary of the results of the stress test conducted under this section.

* * * * *

■ 16. Section 252.16, is amended by revising paragraphs (a) and (b) introductory text to read as follows:

§ 252.16 Reports of stress test results.

(a) *Reports to the Board of stress test results*—(1) *General.* A bank holding company, savings and loan holding company, and state member bank must report the results of the stress test to the Board in the manner and form prescribed by the Board, in accordance with paragraphs (a)(2) of this section.

(2) *Timing.* For each stress test cycle in which a stress test is conducted:

(i) A state member bank that is a covered company subsidiary must report the results of the stress test to the Board by April 5, unless that time is extended by the Board in writing; and

(ii) A state member bank that is not a covered company subsidiary must report the results of the stress test to the Board by July 31, unless that time is extended by the Board in writing.

(b) *Contents of reports.* The report required under paragraph (a) of this section must include the following information for the baseline scenario, severely adverse scenario, and any other scenario required under § 252.14(b)(3):

* * * * *

■ 17. Section 252.17, which was proposed to be revised at 83 FR 61408 (November 29, 2018), is further amended by revising paragraph (a) to read as follows:

§ 252.17 Disclosure of stress test results.

(a) *Public disclosure of results*—(1) *General.* (i) A bank holding company, savings and loan holding company, and

state member bank must publicly disclose a summary of the results of the stress test required under this subpart.

(ii) [Reserved]

(2) *Timing.* For each stress test cycle in which a stress test is conducted:

(i) A state member bank that is a covered company subsidiary must publicly disclose a summary of the results of the stress test within 15 calendar days after the Board discloses the results of its supervisory stress test of the covered company pursuant to § 252.46(c), unless that time is extended by the Board in writing; and

(ii) A state member bank that is not a covered company subsidiary must publicly disclose a summary of the results of the stress test in the period beginning on October 15 and ending on October 31, unless that time is extended by the Board in writing.

* * * * *

Subpart E—Supervisory Stress Test Requirements for Certain U.S. Banking Organizations With $100 Billion or More in Total Consolidated Assets and Nonbank Financial Companies Supervised by the Board

■ 18. Section 252.42 is amended by removing and reserving paragraph (b) and revising paragraphs (n) and (o) to read as follows:

§ 252.42 Definitions

* * * * *

(b) [Reserved]

* * * * *

(n) *Scenarios* are those sets of conditions that affect the U.S. economy or the financial condition of a covered company that the Board annually determines are appropriate for use in the supervisory stress tests, including, but not limited to, baseline and severely adverse scenarios.

(o) *Severely adverse scenario* means a set of conditions that affect the U.S. economy or the financial condition of a covered company and that overall are significantly more severe than those associated with the baseline scenario and may include trading or other additional components.

* * * * *

■ 19. Section 252.44, which was proposed to be amended at 83 FR 61408 (November 29, 2018), is further amended by revising paragraph (b) to read as follows:

§ 252.44 Analysis conducted by the Board.

* * * * *

(b) *Economic and financial scenarios related to the Board's analysis.* The Board will conduct its analysis using a minimum of two different scenarios, including a baseline scenario and a severely adverse scenario. The Board will notify covered companies of the scenarios that the Board will apply to conduct the analysis for each stress test cycle to which the covered company is subject by no later than February 15 of that year, except with respect to trading or any other components of the scenarios and any additional scenarios that the Board will apply to conduct the analysis, which will be communicated by no later than March 1 of that year.

* * * * *

Subpart F—Company-Run Stress Test Requirements for Certain U.S. Bank Holding Companies and Nonbank Financial Companies Supervised by the Board

■ 20. Section 252.52, which was proposed to be revised at 83 FR 61408 (November 29, 2018), is further amended by removing and reserving paragraph (b) and revising paragraphs (o) and (p) to read as follows:

§ 252.52 Definitions.

* * * * *

(b) [Reserved]

* * * * *

(o) *Scenarios* are those sets of conditions that affect the U.S. economy or the financial condition of a covered company that the Board annually or biennially determines are appropriate for use in the company-run stress tests, including, but not limited to, baseline and severely adverse scenarios.

(p) *Severely adverse scenario* means a set of conditions that affect the U.S. economy or the financial condition of a covered company and that overall are significantly more severe than those associated with the baseline scenario and may include trading or other additional components.

* * * * *

■ 21. Section 252.54, which was proposed to be revised at 83 FR 61408 (November 29, 2018), is further amended by revising paragraphs (b)(2)(i) and (ii) to read as follows:

§ 252.54 Stress test.

* * * * *

(b) * * *

(2) * * *

(i) The Board may require a covered company with significant trading activity, as determined by the Board and specified in the Capital Assessments and Stress Testing report (FR Y–14), to include a trading and counterparty component in its severely adverse scenario in the stress test required by this section. The data used in this component must be as of a date selected by the Board between October 1 of the previous calendar year and March 1 of the calendar year in which the stress test is performed pursuant to this section, and the Board will communicate the as-of date and a description of the component to the company no later than March 1 of the calendar year in which the stress test is performed pursuant to this section.

(ii) The Board may require a covered company to include one or more additional components in its severely adverse scenario in the stress test required by this section based on the company's financial condition, size, complexity, risk profile, scope of operations, or activities, or risks to the U.S. economy.

* * * * *

■ 22. Section 252.55, which was proposed to be revised at 83 FR 61408 (November 29, 2018), is further amended by revising paragraphs (b)(1) and (2) and (b)(4)(i) to read as follows:

§ 252.55 Mid-cycle stress test.

* * * * *

(b) * * *

(1) *In general.* A U.S. intermediate holding company must develop and employ a minimum of two scenarios, including a baseline scenario and severely adverse scenario that are appropriate for its own risk profile and operations, in conducting the stress test required by this section.

(2) *Additional components.* The Board may require a U.S. intermediate holding company to include one or more additional components in its severely adverse scenario in the stress test required by this section based on the company's financial condition, size, complexity, risk profile, scope of operations, or activities, or risks to the U.S. economy.

* * * * *

(4) * * *

(i) *Notification of additional component.* If the Board requires a U.S. intermediate holding company to include one or more additional components in its severely adverse scenario under paragraph (b)(2) of this section or one or more additional scenarios under paragraph (b)(3) of this section, the Board will notify the company in writing. The Board will provide such notification no later than June 30. The notification will include a general description of the additional component(s) or additional scenario(s) and the basis for requiring the company to include the additional component(s) or additional scenario(s).

* * * * *

■ 23. Section 252.56 is amended by revising paragraph (c)(2) to read as follows:

§ 252.56 Methodologies and practices.

* * * * *

(c) * * *

(2) *Oversight of stress testing processes.* The board of directors, or a committee thereof, of a covered company must review and approve the policies and procedures of the stress testing processes as frequently as economic conditions or the condition of the covered company may warrant, but no less than each year a stress test is conducted. The board of directors and senior management of the covered company must receive a summary of the results of any stress test conducted under this subpart.

* * * * *

■ 24. Appendix A is amended by:

■ a. Revising Section 1a and b, Section 2c, Section 3a, Section 3.2(a), Section 4, Section 4.1a, and Section 4.2;

■ b. Removing Section 4.3;

■ c. Revising Section 5a and b and Section 5.2.2a; and

■ d. Removing Section 5.3 and Section 6d.

The revisions read as follows:

Appendix A to Part 252—Policy Statement on the Scenario Design Framework for Stress Testing

1. Background

a. The Board has imposed stress testing requirements through its regulations (stress test rules) implementing section 165(i) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act or Act) and through its capital plan rule (12 CFR 225.8). Under the stress test rules issued under section 165(i)(1) of the Act, the Board conducts an annual stress test (supervisory stress tests), on a consolidated basis, of each bank holding company with total consolidated assets of $100 billion or more, intermediate holding company of a foreign banking organization, and nonbank financial company that the Financial Stability Oversight Council has designated for supervision by the Board (together, covered companies).[17] In addition, under the stress test rules issued under section 165(i)(2) of the Act, covered companies must conduct stress tests semi-annually and other financial companies with total consolidated assets of more than $250 billion and for which the Board is the primary regulatory agency must conduct stress tests on a periodic basis (together, company-run stress tests).[18] The Board will provide for at least two different sets of conditions (each set, a scenario), including baseline and severely adverse scenarios for both supervisory and company-run stress tests (macroeconomic scenarios).[19]

b. The stress test rules provide that the Board will notify covered companies by no later than February 15 of each year of the scenarios it will use to conduct its annual supervisory stress tests and provide, also by no later than February 15, covered companies and other financial companies subject to the final rules the set of scenarios they must use to conduct their annual company-run stress tests. Under the stress test rules, the Board may require certain companies to use additional components in the severely adverse scenario or additional scenarios. For example, the Board expects to require large banking organizations with significant trading activities to include a trading and counterparty component (market shock, described in the following sections) in their severely adverse scenario. The Board will provide any additional components or scenario by no later than March 1 of each year.[20] The Board expects that the scenarios it will require the companies to use will be the same as those the Board will use to conduct its supervisory stress tests (together, stress test scenarios).

* * * * *

2. Overview and Scope

* * * * *

c. The remainder of this policy statement is organized as follows. Section 3 provides a broad description of the baseline and severely adverse scenarios and describes the types of variables that the Board expects to include in the macroeconomic scenarios and the market shock component of the stress test scenarios applicable to companies with significant trading activity. Section 4 describes the Board's approach for developing the macroeconomic scenarios, and section 5 describes the approach for the market shocks. Section 6 describes the relationship between the macroeconomic scenario and the market shock components. Section 7 provides a timeline for the formulation and publication of the macroeconomic assumptions and market shocks.

3. Content of the Stress Test Scenarios

a. The Board will publish a minimum of two different scenarios, including baseline and severely adverse conditions, for use in stress tests required in the stress test rules.[9] In general, the Board anticipates that it will not issue additional scenarios. Specific circumstances or vulnerabilities that in any given year the Board determines require particular vigilance to ensure the resilience of the banking sector will be captured in the severely adverse scenario. A greater number of scenarios could be needed in some years—for example, because the Board identifies a large number of unrelated and uncorrelated but nonetheless significant risks.

[9] 12 CFR 252.14(b), 12 CFR 252.44(b), 12 CFR 252.54(b).

* * * * *

3.2 Market Shock Component

a. The market shock component of the severely adverse scenario will only apply to companies with significant trading activity and their subsidiaries.[12] The component consists of large moves in market prices and rates that would be expected to generate losses. Market shocks differ from macroeconomic scenarios in a number of ways, both in their design and application. For instance, market shocks that might typically be observed over an extended period (*e.g.,* 6 months) are assumed to be an instantaneous event which immediately affects the market value of the companies' trading assets and liabilities. In addition, under the stress test rules, the as-of date for market shocks will differ from the quarter-end, and the Board will provide the as-of date for market shocks no later than February 1 of each year. Finally, as described in section 4, the market shock includes a much larger set of risk factors than the set of economic and financial variables included in macroeconomic scenarios. Broadly, these risk factors include shocks to financial market variables that affect asset prices, such as a credit spread or the yield on a bond, and, in some cases, the value of the

[17] 12 U.S.C. 5365(i)(1); 12 CFR part 252, subpart E.

[18] 12 U.S.C. 5365(i)(2); 12 CFR part 252, subparts B and F.

[19] The stress test rules define scenarios as those sets of conditions that affect the United States economy or the financial condition of a company that the Board annually determines are appropriate for use in stress tests, including, but not limited to, baseline and severely adverse scenarios. The stress test rules define baseline scenario as a set of conditions that affect the United States economy or the financial condition of a company and that reflect the consensus views of the economic and financial outlook. The stress test rules define severely adverse scenario as a set of conditions that affect the United States economy or the financial condition of a company and that overall are significantly more severe than those associated with the baseline scenario and may include trading or other additional components.

[20] *Id.*

position itself (*e.g.,* the market value of private equity positions).

[12] Currently, companies with significant trading activity include any bank holding company or intermediate holding company that (1) has aggregate trading assets and liabilities of $50 billion or more, or aggregate trading assets and liabilities equal to 10 percent or more of total consolidated assets, and (2) is not a large and noncomplex firm.. The Board may also subject a state member bank subsidiary of any such bank holding company to the market shock component. The set of companies subject to the market shock component could change over time as the size, scope, and complexity of financial company's trading activities evolve.

* * * * *

4. Approach for Formulating the Macroeconomic Assumptions for Scenarios

a. This section describes the Board's approach for formulating macroeconomic assumptions for each scenario. The methodologies for formulating this part of each scenario differ by scenario, so these methodologies for the baseline and severely adverse scenarios are described separately in each of the following subsections.

b. In general, the baseline scenario will reflect the most recently available consensus views of the macroeconomic outlook expressed by professional forecasters, government agencies, and other public-sector organizations as of the beginning of the annual stress-test cycle. The severely adverse scenario will consist of a set of economic and financial conditions that reflect the conditions of post-war U.S. recessions.

c. Each of these scenarios is described further in sections below as follows: Baseline (subsection 4.1) and severely adverse (subsection 4.2)

4.1 Approach for Formulating Macroeconomic Assumptions in the Baseline Scenario

a. The stress test rules define the baseline scenario as a set of conditions that affect the U.S. economy or the financial condition of a banking organization, and that reflect the consensus views of the economic and financial outlook. Projections under a baseline scenario are used to evaluate how companies would perform in more likely economic and financial conditions. The baseline serves also as a point of comparison to the severely adverse scenario, giving some sense of how much of the company's capital decline could be ascribed to the scenario as opposed to the company's capital adequacy under expected conditions.

* * * * *

4.2 Approach for Formulating the Macroeconomic Assumptions in the Severely Adverse Scenario

The stress test rules define a severely adverse scenario as a set of conditions that affect the U.S. economy or the financial condition of a financial company and that overall are significantly more severe than those associated with the baseline scenario. The financial company will be required to publicly disclose a summary of the results of its stress test under the severely adverse scenario, and the Board intends to publicly disclose the results of its analysis of the financial company under the severely adverse scenario.

* * * * *

5. Approach for Formulating the Market Shock Component

a. This section discusses the approach the Board proposes to adopt for developing the market shock component of the severely adverse scenario appropriate for companies with significant trading activities. The design and specification of the market shock component differs from that of the macroeconomic scenarios because profits and losses from trading are measured in mark-to-market terms, while revenues and losses from traditional banking are generally measured using the accrual method. As noted above, another critical difference is the time-evolution of the market shock component. The market shock component consists of an instantaneous ''shock'' to a large number of risk factors that determine the mark-to-market value of trading positions, while the macroeconomic scenarios supply a projected path of economic variables that affect traditional banking activities over the entire planning period.

b. The development of the market shock component that are detailed in this section are as follows: Baseline (subsection 5.1) and severely adverse (subsection 5.2).

* * * * *

5.2.2 Approaches to Market Shock Design

a. As an additional component of the severely adverse scenario, the Board plans to use a standardized set of market shocks that apply to all companies with significant trading activity. The market shocks could be based on a single historical episode, multiple historical periods, hypothetical (but plausible) events, or some combination of historical episodes and hypothetical events (hybrid approach). Depending on the type of hypothetical events, a scenario based on such events may result in changes in risk factors that were not previously observed. In the supervisory scenarios for 2012 and 2013, the shocks were largely based on relative moves in asset prices and rates during the second half of 2008, but also included some additional considerations to factor in the widening of spreads for European sovereigns and financial companies based on actual observation during the latter part of 2011.

* * * * *

By order of the Board of Governors of the Federal Reserve System, January 8, 2019.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2019–00484 Filed 2–13–19; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–1069; Product Identifier 2018–NM–128–AD]

RIN 2120–AA64

Airworthiness Directives; ATR—GIE Avions de Transport Régional Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all ATR—GIE Avions de Transport Régional Model ATR72 airplanes. This proposed AD was prompted by a determination that new or more restrictive maintenance instructions and airworthiness limitations are necessary. This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive maintenance instructions and airworthiness limitations. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by April 1, 2019.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–

30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

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

For service information identified in this NPRM, contact ATR—GIE Avions de Transport Régional, 1 Allée Pierre Nadot, 31712 Blagnac Cedex, France; telephone +33 (0) 5 62 21 62 21; fax +33 (0) 5 62 21 67 18; email *continued.airworthiness@atr-aircraft.com;* internet *http://www.atr-aircraft.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.

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–2018–1069; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

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:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2018–1069; Product Identifier 2018–NM–128–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. We will consider all comments received by the closing date and may amend this NPRM because of those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2018–0184, dated August 28, 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 ATR72 airplanes. The MCAI states:

> The airworthiness limitations and certification maintenance requirements (CMR) for ATR aeroplanes, which are approved by EASA, are currently defined and published in the TLD [time limits document]. These instructions have been identified as mandatory for continued airworthiness.
>
> Failure to accomplish these instructions could result in an unsafe condition.
>
> Previously, EASA issued AD 2017–0223 (later revised) to require accomplishment of the actions specified in the TLD at Revision 15.
>
> Since EASA AD 2017–0223R1 [which corresponds to FAA AD 2018–14–11, Amendment 39–19331 (83 FR 34031, July 19, 2018)] was issued, ATR published Revision 16 of the TLD for ATR 72 aeroplanes, introducing new and/or more restrictive airworthiness limitations and/or maintenance actions.
>
> For the reasons described above, this [EASA] AD retains the requirements of EASA AD 2017–0223R1, which is superseded, and requires accomplishment of the actions specified in the TLD.

This proposed AD would require revising the existing maintenance or inspection program to incorporate certain maintenance instructions and airworthiness limitations. The unsafe condition is fatigue cracking and damage in principal structural elements, which could result in reduced structural integrity of the airplane. 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–2018–1069.

Relationship Between Proposed AD and AD 2018–14–11

This NPRM does not propose to supersede AD 2018–14–11. Rather, we have determined that a stand-alone AD is more appropriate to address the changes in the MCAI. This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive maintenance instructions and airworthiness limitations. Accomplishment of the proposed actions would then terminate all of the requirements of AD 2018–14–11.

Related Service Information Under 1 CFR Part 51

ATR—GIE Avions de Transport Régional has issued ATR ATR72 Time Limits Document, Revision 16, dated January 30, 2018. This service information describes preventive maintenance requirements and includes updated limitations, tasks, thresholds and intervals to be incorporated into the maintenance or inspection program. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

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

Proposed Requirements of This NPRM

This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate new or revised maintenance instructions and airworthiness limitations.

This proposed AD would require revisions to certain operator maintenance documents to include new actions (*e.g.,* inspections). Compliance with these actions is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (l)(1) of this proposed AD.

Difference Between This Proposed AD and the MCAI

The MCAI specifies that if there are findings from the airworthiness limitations section (ALS) inspection tasks, corrective actions must be accomplished in accordance with Avions de Transport Régional maintenance documentation. However, this proposed AD does not include that requirement. Operators of U.S.-registered airplanes are required by

general airworthiness and operational regulations to perform maintenance using methods that are acceptable to the FAA. We consider those methods to be adequate to address any corrective actions necessitated by the findings of ALS inspections required by this proposed AD.

Costs of Compliance

We estimate that this proposed AD affects 23 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

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

Regulatory Findings

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

ATR—GIE Avions de Transport Régional: Docket No. FAA–2018–1069; Product Identifier 2018–NM–128–AD.

(a) Comments Due Date

We must receive comments by April 1, 2019.

(b) Affected ADs

This AD affects AD 2018–14–11, Amendment 39–19331 (83 FR 34031, July 19, 2018) (''AD 2018–14–11'').

(c) Applicability

This AD applies to ATR—GIE Avions de Transport Régional Model ATR72–101, –102, –201, –202, –211, –212, and –212A airplanes, certificated in any category, with an original certificate of airworthiness or original export certificate of airworthiness issued on or before January 30, 2018.

(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 maintenance instructions and airworthiness limitations are necessary. We are issuing this AD to prevent fatigue cracking and damage in principal structural elements, which could result in reduced structural integrity of the airplane.

(f) Compliance

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

(g) Maintenance or Inspection Program Revision

Within 90 days after the effective date of this AD, revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in ATR ATR72 Time Limits Document, Revision 16, dated January 30, 2018. The initial compliance time for doing the tasks is at the time specified in ATR ATR72 Time Limits Document, Revision 16, dated January 30, 2018, or within 90 days after the effective date of this AD, whichever occurs later, except as provided by paragraphs (h) and (i) of this AD.

(h) Initial Compliance Times for Certain Tasks

For accomplishing airworthiness limitations (AWL) and certification maintenance requirement (CMR)/ maintenance significant item (MSI) tasks identified in table 1 to paragraph (h) of this AD, the initial compliance time is at the applicable time specified in the ALS of the ATR ATR72 Time Limits Document, Revision 16, dated January 30, 2018, or at the applicable compliance time in table 1 to paragraph (h) of this AD, whichever occurs latest.

Table 1 to paragraph (h) of this AD – *Grace period for CMR/MSI tasks*

CMR/MSI Tasks	Compliance Time
213100-1 213100-2 213100-3	Within 550 flight hours or 3 months after August 23, 2018 (the effective date of AD 2018-14-11), whichever occurs first

(i) Initial Compliance Time: One-time Threshold

For CMR task 220000–5, a one-time threshold, as specified in ATR ATR72 Time Limits Document, Revision 16, dated January 30, 2018, is allowed as specified in table 2 to paragraph (i) of this AD.

Table 2 to paragraph (i) of this AD – *Initial threshold for CMR task*

Configuration	Compliance Time
ATR modification 7585 embodied in production	Within 7,000 flight hours since first flight of the airplane
ATR Service Bulletin ATR72-34-1154 embodied in service	Within 7,000 flight hours after embodiment of ATR Service Bulletin ATR72-34-1154

(j) No Alternative Actions and Intervals

After the maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) and intervals may be used unless the actions and intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (l)(1) of this AD.

(k) Terminating Action for AD 2018–14–11

Accomplishing the actions required by this AD terminates all requirements of AD 2018–14–11.

(l) 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 (m)(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.

(m) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2018–0184, dated August 28, 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–2018–1069.

(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) For service information identified in this AD, contact ATR—GIE Avions de Transport Régional, 1 Allée Pierre Nadot, 31712 Blagnac Cedex, France; telephone +33 (0) 5 62 21 62 21; fax +33 (0) 5 62 21 67 18; email *continued.airworthiness@atr-aircraft.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.

Issued in Des Moines, Washington, on January 10, 2019.

Jeffrey E. Duven,

Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–02158 Filed 2–13–19; 8:45 am]

BILLING CODE 4910–13–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1614

RIN 3046–AA97

Federal Sector Equal Employment Opportunity

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Equal Employment Opportunity Commission (''EEOC'' or ''Commission'') is proposing a revision to its federal sector complaint processing regulations in order to bring them into compliance with a federal circuit court decision concerning whether and when a complainant may file a civil action after having previously filed an administrative appeal or request for reconsideration with the EEOC. The EEOC also proposes making certain editorial changes.

DATES: Comments on the Notice of Proposed Rulemaking (hereinafter

''NPRM'') must be received on or before April 15, 2019.

ADDRESSES: You may submit comments, identified by RIN Number 3046–AA97, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 663–4114. (There is no toll free FAX number). Only comments of six or fewer pages will be accepted via FAX transmittal, in order to assure access to the equipment. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663–4070 (voice) or (202) 663–4074 (TTY). (These are not toll free numbers).
- *Mail:* Bernadette B. Wilson, Executive Officer, Executive Secretariat, U.S. Equal Employment Opportunity Commission, 131 M Street NE, Washington, DC 20507.
- *Hand Delivery/Courier:* Bernadette B. Wilson, Executive Officer, Executive Secretariat, U.S. Equal Employment Opportunity Commission, 131 M Street NE, Washington, DC 20507.

Instructions: The Commission invites comments from all interested parties. All comment submissions must include the agency name and docket number or the Regulatory Information Number (RIN) for this rulemaking. Comments need be submitted in only one of the above-listed formats. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information you provide.

Docket: For access to comments received, go to *http://www.regulations.gov.* Copies of the received comments also will be available for review at the Commission's library, 131 M Street NE, Suite 4NW08R, Washington, DC 20507, between the hours of 9:30 a.m. and 5:00 p.m., from April 15, 2019 until the Commission publishes the rule in final form but you must make an appointment to do so with library staff.

FOR FURTHER INFORMATION CONTACT: Kathleen Oram, Assistant Legal Counsel, (202) 663–4681, or Gary J. Hozempa, Senior Staff Attorney, (202) 663–4666, or 1–800–669–6820) (TTY), Office of Legal Counsel, U.S. Equal Employment Opportunity Commission. (The first two telephone numbers are not toll free numbers). Requests for this document in an alternative format should be made to the Office of Communications and Legislative Affairs at (202) 663–4900 (voice) or (202) 663–4494 (TTY).

SUPPLEMENTARY INFORMATION: As set forth under the current federal sector EEO complaint system (29 CFR part 1614), an individual complainant, or a class agent or claimant, who has filed an administrative complaint alleging a violation of section 717 of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e–16 (hereinafter ''Title VII''); section 15 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. 633a (hereinafter ''ADEA''); section 501 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 791 (hereinafter ''Rehabilitation Act''); or section 202 of Title II of the Genetic Information Nondiscrimination Act of 2008, 42 U.S.C. 2000ff (hereinafter ''GINA''), may file a civil action within 90 days of receipt of final agency action unless the complainant has filed an appeal with the EEOC. *See* 29 CFR 1614.407(a). When an appeal is filed with the EEOC, the current rules state that the complainant must wait to file a civil action until one of two events occurs: the EEOC issues a final decision on the appeal; or 180 days have passed since the filing of the appeal and the EEOC has not issued a decision within that time period. *See* 29 CFR 1614.407(c) & (d) (a complainant may file a civil action ''[w]ithin 90 days of receipt of the Commission's final decision on an appeal[ ] or . . . [a]fter 180 days from the date of filing an appeal . . . if there has been no final decision by the Commission.'').

In 2012, the Ninth Circuit held that a literal application of 29 CFR 1614.407(d) is not warranted in all circumstances. In *Bullock* v. *Berrien,* 688 F.3d 613 (9th Cir. 2012), a federal employee (hereinafter referred to as ''complainant'') filed an administrative EEO complaint against her employing agency and subsequently filed an administrative appeal with the EEOC regarding the agency's final action on her complaint. Shortly thereafter, the complainant withdrew the appeal and filed a civil action. The lawsuit was filed within the 90-day period following her receipt of the agency's final action.

The district court dismissed the civil action, finding that the complainant had failed to exhaust her administrative remedies. Relying on 29 CFR 1614.407(d), the district court concluded that the complainant's appeal to EEOC ''triggered the mandatory 180-day waiting period before Plaintiff was permitted to file with this Court.'' *Bullock* v. *Dominguez,* 2010 WL 1734964, at *3 (S.D. Cal. April 27, 2010). The district court stated that the plaintiff's ''abandoned appeal would still trigger the 180-day rule, and her suit in this court was therefore premature.'' *Id.* (citations omitted).

On appeal, the Ninth Circuit reversed. The court reasoned that, because a federal sector complainant can file a civil action within 90 days of receipt of the agency final action and is not required to file an appeal before going to court, an appeal to the EEOC is an optional rather than a required administrative step. The court concluded, therefore, that a federal employee can withdraw an optional appeal and file a civil action within the 90-day period following receipt of the agency final action. *See Bullock,* 688 F.3d at 618–19. The court noted that it had ''no occasion to decide whether an employee's lawsuit could proceed if the employee prematurely withdrew from an administrative appeal and filed suit *more than* 90 days after receiving notice of the final agency action on her complaint.'' *Id.* at 619 (citations omitted).

In light of the Ninth Circuit's decision, the EEOC believes its regulations regarding a complainant's right to file a civil action should be revised to recognize that filing an administrative appeal or a request for reconsideration is an optional administrative step, and that an administrative appeal or a request for reconsideration may be withdrawn without affecting the complainant's right to file a civil action.

In an initial draft of this NPRM that, pursuant to Executive Order 12067, the EEOC sent to federal agencies for coordination, the EEOC proposed to eliminate from 1614.407(a) and (b) language stating that a complainant may not go to court if an administrative appeal has been filed. The EEOC also proposed adding a paragraph (e) to 1614.407, stating that a complainant who has filed an appeal can withdraw it and proceed to court so long as the EEOC has not issued a final decision on the appeal.

Thirteen agencies submitted comments. Three agencies concurred, but ten others opposed the proposed changes, particularly with respect to proposed 1614.407(e). The opposing agencies generally argued that the draft NPRM appeared to allow a complainant to withdraw an appeal and go to court even after 90 days of receipt of an agency final action, thereby purportedly establishing a right to file a civil action that does not exist in § 717(c) of Title VII. It is the intent of the Commission to make clear that, as held in *Bullock,* an appeal to the EEOC is an optional rather than a required administrative step, and that administrative exhaustion can occur when an agency either takes final action on a complaint or fails to take final action on a complaint within

180 days of the date the complaint is filed.[1] The Commission can achieve this result through its proposed revisions to paragraphs (a) and (b) of 1614.407 (*i.e.,* deleting the words ''if no appeal has been filed'' from current paragraph (a), and ''if an appeal has not been filed'' from current paragraph (b)). Additionally, section 717(c) of Title VII, 42 U.S.C. 2000e–16(c), provides that a complainant who wants to file a civil action after receiving notice of an agency's final action must do so within 90 days. Thus, we agree that proposed 1614.407(e) should be revised to clarify that a complainant who has filed an appeal can withdraw it and proceed to court so long as the complainant does so within 90 days of receipt of an agency final action.

Relatedly, after receiving an appellate decision from the Commission, ''[a] party may request reconsideration within 30 days of receipt of a decision of the Commission. . . .'' *See* 29 CFR 1614.405(c). If a request for reconsideration is filed, the appellate decision on which it is based is not deemed final for purposes of triggering the right to file a civil action contained in 29 CFR 1614.407(c). *See* 29 CFR 1614.405(c) (''A decision issued [on appeal] is final within the meaning of § 1614.407 unless a timely request for reconsideration is filed by a party to the case.''). Instead, the Commission decision issued in response to the request for reconsideration constitutes the EEOC's final decision for purposes of invoking the 90-day time period in which a complainant may file a civil action. *See* 29 CFR 1614.407(c) (a complainant may file a civil action ''[w]ithin 90 days of receipt of the Commission's final decision . . . .''). For purposes of consistency, the Commission also proposes to add a paragraph (f) to current § 1614.407 in order to address requests for reconsideration.

In conjunction with the proposed revision to 29 CFR 1614.407, the EEOC is proposing to remove 29 CFR 1614.201(c). This paragraph currently sets forth the conditions under which a complainant who has filed a non-mixed case complaint alleging age discrimination is deemed to have exhausted administrative remedies and can file a civil action. Exhaustion requirements for complaints filed under the ADEA (as well as complaints filed under Title VII, the Rehabilitation Act, and GINA) also are set forth in § 1614.407. Some, but not all, of the exhaustion requirements under paragraph 1614.201(c) are the same as those under § 1614.407. To the extent the exhaustion requirements differ, those listed in § 1614.407, as amended by this proposed rule, are the correct ones. Therefore, the EEOC proposes to eliminate paragraph 1614.201(c).

The unique alternative exhaustion requirement that solely pertains to complaints filed under the ADEA—that a complainant may file a civil action thirty days after giving EEOC notice of the intent to file the civil action—is retained in current paragraph 1614.201(a). Similarly, the exhaustion requirements applicable to all mixed-case complaints, including those filed under the ADEA (as well as Title VII, the Rehabilitation Act, and GINA), as set forth in § 1614.310, are retained. Thus, the proposed elimination of paragraph 1614.201(c) will not affect the rights of a complainant who files an ADEA complaint, whether as a mixed or non-mixed complaint.

One agency suggested that the EEOC include a provision requiring a complainant to notify the relevant agency when the complainant withdraws an appeal filed with OFO. While this suggestion has merit, the EEOC's concern is with the enforceability of the suggested rule. Nevertheless, the EEOC proposes revising 29 CFR 1614.409 to indicate that the EEOC will not be able to enforce an appellate decision that is issued after a complainant has filed a civil action, and that a complainant should notify the EEOC when he or she files a civil action while an appeal is pending.

Finally, the EEOC proposes making an editorial change to 29 CFR 1614.505(a)(4) (''Interim relief''). Currently, that paragraph contains an erroneous reference to § 1614.505(b)(2). There is no paragraph (b)(2) within § 1614.505. Instead, the proper reference should be to paragraph (a)(3) of § 1614.505. Thus, the Commission proposes making this change.

Regulatory Procedures

Executive Order 12866

The Commission has complied with the principles in section 1(b) of Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a ''significant regulatory action'' under section 3(f) of the Order, and does not require an assessment of potential costs and benefits under section 6(a)(3) of the Order.

Executive Order 13771

This proposed rule is not subject to Executive Order 13771, Reducing Regulation and Controlling Regulatory Cost. Pursuant to guidance issued by the Office of Management and Budget's Office of Information and Regulatory Affairs (April 5, 2017), an ''E.O. 13771 regulatory action'' is defined as ''[a] significant regulatory action as defined in section 3(f) of E.O. 12866 . . . .'' As noted above, this proposed rule is not a significant regulatory action under section 3(f) of E.O. 12866. Thus, this proposed rule does not require the EEOC to issue two E.O. 13771 deregulatory actions.

Paperwork Reduction Act

This proposed rule contains no new information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

Regulatory Flexibility Act

The Commission certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities because it applies exclusively to employees and agencies of the federal government and does not impose a burden on any business entities. For this reason, a regulatory flexibility analysis is not required.

Unfunded Mandates Reform Act of 1995

This proposed rule will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were

[1] While the EEOC agrees with the Ninth Circuit's holding that an appeal to the EEOC of a final agency action is not required for exhaustion of administrative remedies, the EEOC disagrees with any suggestion that ''adjudication by an ALJ'' is required for exhaustion. *See Bullock,* 688 F.3d at 618 (''[W]e hold that an aggrieved employee subject to the procedural rules of Title VII exhausts her administrative remedies by filing a formal complaint for adjudication by an ALJ.''). The Ninth Circuit misstated the complaint processing steps set forth in 29 CFR part 1614. After filing a complaint, a complainant may request a hearing or an immediate final agency decision. The hearing is therefore optional and is held before an EEOC-employed Administrative Judge (AJ) (not an Administrative Law Judge appointed under 5 U.S.C. 3105). *See* 29 CFR 1614.108(f) (''the complainant has the right to request a hearing and decision from an administrative judge or may request an immediate final decision . . . from the agency with which the complaint was filed''); 1614.108(h) (''the complainant may request a hearing . . .''); 1614.109(a) (''When a complainant requests a hearing, the Commission shall appoint an administrative judge to conduct a hearing in accordance with this section.''); 1614.110 (''[w]hen an agency . . . receives a request for an immediate final decision . . .''). Thus, exhaustion occurs 180 days after the filing of the complaint, regardless of whether the complainant requests or receives a hearing. *See* 29 CFR 1614.108(g) (''If the agency . . . has been unable to complete its investigation within the time limits required by § 1614.108(f) [(usually 180 days after the complaint is filed),] . . . the complainant . . . may . . . file a civil action in an appropriate United States District Court . . . .'').

deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This proposed rule does not substantially affect the rights or obligations of non-agency parties and, accordingly, is not a ''rule'' as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

List of Subjects in 29 CFR Part 1614

Administrative practice and procedure, Age discrimination, Equal employment opportunity, Government employees, Individuals with disabilities, Race discrimination, Religious discrimination, Sex discrimination.

For the Commission.

Dated: December 20, 2018.

Victoria A. Lipnic,

Acting Chair.

Accordingly, for the reasons set forth in the preamble, the Equal Employment Opportunity Commission proposes to amend chapter XIV of title 29 of the Code of Federal Regulations as follows:

PART 1614—FEDERAL SECTOR EQUAL EMPLOYMENT OPPORTUNITY

■ 1. The authority citation for 29 CFR part 1614 continues to read as follows:

Authority: 29 U.S.C. 206(d), 633a, 791 and 794a; 42 U.S.C. 2000e–16; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218; E.O. 11222, 3 CFR, 1964–1965 Comp., p. 306; E.O. 11478, 3 CFR, 1969 Comp., p. 133; E.O. 12106, 3 CFR, 1978 Comp., p. 263; Reorg. Plan No. 1 of 1978, 3 CFR, 1978 Comp., p. 321.

§ 1614.201 [Amended]

■ 2. In § 1614.201, remove paragraph (c).

■ 3. In § 1614.407:

■ a. Revise the section heading;

■ b. In the introductory text, remove the word ''and'' after ''ADEA'' and add in its place a comma; and add the words ''and Genetic Information Nondiscrimination Act'' after ''Rehabilitation Act''; and

■ c. Revise paragraphs (a) and (b), and add paragraphs (e) and (f).

The revisions and additions read as follows:

§ 1614.407 Civil action: Title VII, Age Discrimination in Employment Act, Rehabilitation Act, and Genetic Information Nondiscrimination Act.

* * * * *

(a) Within 90 days of receipt of the agency final action on an individual or class complaint;

(b) After 180 days from the date of filing an individual or class complaint if agency final action has not been taken;

* * * * *

(e) After filing an appeal with the EEOC from an agency final action, the complainant, class agent, or class claimant may withdraw the appeal and file a civil action within 90 days of receipt of the agency final action. If the complainant, class agent, or class claimant files an appeal with the EEOC from a final agency action and more than 90 days have passed since receipt of the agency final action, the appellant may file a civil action only in accordance with paragraphs (c) or (d) of this section.

(f) After filing a request for reconsideration of an EEOC decision on an appeal, the complainant, class agent, or class claimant may withdraw the request and file a civil action within 90 days of receipt of the EEOC's decision on the appeal. If the complainant, class agent, or class claimant files a request for reconsideration of an EEOC decision on an appeal and more than 90 days have passed since the appellant received the EEOC's decision on the appeal, the appellant may file a civil action only in accordance with paragraphs (c) or (d) of this section.

■ 4. In § 1614.409, revise the introductory text to read as follows:

§ 1614.409 Effect of filing a civil action.

Filing a civil action under § 1614.407 or § 1614.408 shall terminate Commission processing of the appeal. A Commission decision on an appeal issued after a complainant files suit in district court will not be enforceable by the Commission. If private suit is filed subsequent to the filing of an appeal and prior to a final Commission decision, the complainant should notify the Commission in writing.

§ 1614.505 [Amended]

■ 5. In § 1614.505(a)(4), remove the reference ''(b)(2)'' and add in its place ''(a)(3).''

[FR Doc. 2019–01976 Filed 2–13–19; 8:45 am]

BILLING CODE 6570–01–P

DEPARTMENT OF EDUCATION

34 CFR Part 106

RIN 1870–AA14

[Docket ID ED–2018–OCR–0064]

Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance

AGENCY: Office for Civil Rights, Department of Education.

ACTION: Notice of proposed rulemaking; reopening of comment period.

SUMMARY: On November 29, 2018, the Department published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend the Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance regulations. That NPRM established a 60-day comment period from November 29, 2018, through January 28, 2019. On January 28, the Department published in the **Federal Register** a document extending the public comment period for two days, until January 30, 2019. In an abundance of caution, to the extent that some users may have experienced technical issues preventing the submission of comments using the Federal eRulemaking Portal, the Department is reopening the comment period for one day on February 15, 2019.

DATES: The comment period for the proposed rule published November 29, 2018 at 83 FR 61462, and extended on January 28, 2019 at 84 FR 409, is reopened. Comments must be submitted to the Department on February 15, 2019.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. The Department will not accept comments submitted by fax or by email or those submitted outside of the comment period. Thus, we will not accept comments submitted from January 31, 2019, through February 14, 2019, or comments submitted after February 15, 2019. To ensure that the Department does not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

• *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using *Regulations.gov*, including instructions for finding a rule on the site and submitting comments, is available on the site under ''How to use *Regulations.gov*'' in the Help section. If

you experience technical difficulties when trying to submit your comment, call the *www.regulations.gov* helpdesk at 877–378–5457.

• *Postal Mail, Commercial Delivery, or Hand Delivery:* The Department strongly encourages commenters to submit their comments electronically. If, however, you mail or deliver your comments about the proposed regulations, address them to Brittany Bull, U.S. Department of Education, 400 Maryland Avenue SW, Room 6E310, Washington, DC 20202–5900. Comments submitted via mail must be postmarked on February 15, 2019. Comments hand-delivered to the Department must be delivered between 9:00 a.m. and 5:00 p.m. EST on February 15, 2019.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Brittany Bull, U.S. Department of Education, 400 Maryland Avenue SW, Room 6E310, Washington, DC 20202–5900. Telephone: 202–453–7100. You may email questions to *TitleIXNPRM@ed.gov,* but, as described above, comments must be submitted via the Federal eRulemaking Portal, postal mail, commercial delivery, or hand delivery.

If you use a telecommunications device for the deaf or a text telephone, call the Federal Relay Service, toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Background: On November 29, 2018, the Department published an NPRM in the **Federal Register** (83 FR 61462), to amend the Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance regulations to provide appropriate standards for how recipients must respond to incidents of sexual harassment. The NPRM established a 60-day comment period through January 28, 2019. On January 28, the Department published in the **Federal Register** a document (84 FR 409) extending the public comment period for two days, until January 30, 2019. In an abundance of caution, to the extent that some users may have experienced technical issues preventing the submission of comments using the Federal eRulemaking Portal, the Department is reopening the comment period for one day on February 15, 2019. Commenters must submit comments: Between 12:00 a.m. EST and 11:59 p.m. EST on February 15, 2019 if submitted through the Federal eRulemaking Portal; between 9:00 a.m. and 5:00 p.m. EST on February 15, 2019, if hand-delivered; or postmarked on February 15, 2019, if delivered by postal mail or commercial delivery. Please do not resubmit a comment that was previously submitted. The Department is continuously processing and posting all comments received from the public in a manner that ensures the Department is able to review and consider each comment. Once all comments have been processed, they will be posted and publicly available.

Call the *www.regulations.gov* helpdesk at 877–378–5457 if you experience any technical difficulties that prevent you from submitting your comment on February 15, 2019. You also have the option to deliver your comment by postal mail, commercial delivery or hand delivery if a technical issue prevents you from submitting your comment through the Federal eRulemaking Portal.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available at *www.govinfo.gov.* At this site, you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at this site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: February 12, 2019.

Betsy DeVos,

Secretary of Education.

[FR Doc. 2019–02566 Filed 2–12–19; 4:15 pm]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2017–0454; FRL–9989–39–Region 4]

Air Plan Approval; NC; Permitting Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a portion of a revision to the North Carolina State Implementation Plan (SIP) submitted by the State of North Carolina through the North Carolina Department of Environmental Quality (formerly the North Carolina Department of Environment and Natural Resources (NCDENR)), Division of Air Quality, through a letter dated March 24, 2006. The revision includes changes to permitting regulations. The revision is part of North Carolina's strategy to meet and maintain the national ambient air quality standards (NAAQS). This action is being taken pursuant to the Clean Air Act (CAA or Act) and its implementing regulations.

DATES: Comments must be received on or before March 18, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2017–0454 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: Nacosta C. Ward, 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. Ward can be reached via telephone at (404) 562–9140, or via electronic mail at *ward.nacosta@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Through a letter dated March 24, 2006, the State of North Carolina, through NCDENR, submitted several changes to the North Carolina SIP for EPA approval. EPA is proposing to approve changes to the following regulations: 15A North Carolina Administrative Code (NCAC) 02Q Sections .0101, *Required Air Quality Permits,* and .0301, *Applicability.*[1] [2] EPA has taken, will take, or will not take separate action on all other changes submitted on March 24, 2006.[3]

II. Analysis of the State Submittal

The revision that is the subject of this proposed rulemaking pertains to changes to air quality permitting regulations related to minor source construction activities under Subchapter 2Q, *Air Quality Permit Procedures.* Detailed descriptions of the changes are below:

2Q Sections .0101, *Required Air Quality Permits,* and .0301, *Applicability,* have been amended to reflect the changes to the North Carolina General Statutes regarding construction to allow additional preconstruction activities for minor sources. With respect to requirements regarding stationary source permits, in both 2Q Sections .0101 and .0301, an exception has been added to allow certain preconstruction activities prior to obtaining a final minor construction permit. Those activities are clearing and grading; construction of access roads, driveways, and parking lots; construction and installation of underground pipe work, including water, sewer, electric, and telecommunications utilities; and construction of ancillary structures, including fences and office buildings that are not a necessary component of an air contaminant source, equipment, or associated air cleaning device. 2Q Section .0101 has been revised to remove a prohibition on entering into irrevocable contracts for the construction, operation, or modification of air cleaning devices. EPA has preliminarily determined that allowing the foregoing preconstruction activities is consistent with the requirements of CAA sections 110(a)(2)(C) and 110(l) and federal regulations at 40 CFR 51.160–51.164.

Section 110(a)(2)(C) of the CAA requires that SIPs include a program for regulating the construction and modification of stationary sources as necessary to ensure that the NAAQS are maintained. The basic purpose of new source review (NSR) permitting is set forth in 40 CFR 51.160(a), requiring NSR SIPs to set forth legally enforceable procedures that enable the State or local agency to determine whether the construction or modification of a stationary source would result in a violation of applicable portions of the control strategy, or would interfere with attainment or maintenance of a NAAQS. Under 40 CFR 51.160, states have discretion in conducting the minor sources permitting programs to exempt certain small or de minimis sources. Congress directed the states to exercise the primary responsibility under the CAA to tailor air quality control measures, including minor source permitting programs, to the state's needs. *See Train* v. *NRDC,* 421 U.S. 60, 79 (1975) (States make the primary decisions over how to achieve CAA requirements); *Union Electric Co.* v. *EPA,* 427 U.S. 246 (1976); *Greenbaum* v. *EPA,* 370 F.3d 527 (6th Cir. 2006).

Federal regulations limit the types of allowed preconstruction activities for new and modified *major* sources, *see* 40 CFR 51.165(a)(1)(xv) and 51.166(b)(11), and North Carolina has adopted these regulations into its SIP. But Federal regulations do not impose a corresponding limitation on preconstruction activities for *minor* sources. The exception for certain preconstruction activities found in both 2Q Sections .0101 and .0301 explicitly applies to facilities subject to 2Q Section .0300 (*i.e.,* minor sources), whereas, as stated in both 2Q Sections .0101(b) and .0301(a), title V facilities (*i.e.,* major sources) are subject to the title V procedures under 2Q Section .0500. Furthermore, the North Carolina statutory provision to which the regulatory exception for certain preconstruction activities refers in both 2Q Sections .0101 and .0301 explicitly provides that the exception ''does not relieve any person from any preconstruction or construction prohibition imposed by any federal requirement, federal delegation, federally approved requirement in any State Implementation Plan, or federally approved requirement under the title V permitting program'' and ''does not apply to any construction, alteration, or expansion that is subject to requirements for prevention of significant deterioration or federal nonattainment new source review. . . .'' N.C.G.S. 143–215.108A.

With these proposed changes, North Carolina's SIP would continue to prohibit the construction of emission units prior to issuance of construction permits. Therefore, there are no stationary-source emissions increases associated with any of the preconstruction activities allowed at 2Q Sections .0101 and .0301. Additionally, North Carolina has legally enforceable procedures to prevent construction or modification of a source if it would violate SIP control strategies or interfere with attainment or maintenance of the NAAQS, as required by 40 CFR 51.160(b).

The changes to North Carolina's minor source permitting requirements, as contained in Subchapter 2Q of the North Carolina SIP, are not inconsistent with the requirements of the CAA and EPA's regulations, and are thus approvable as part of the SIP. EPA is therefore proposing action to approve the aforementioned changes pursuant to the CAA and 40 CFR 51.160–164.

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 regulations under Subchapter 2Q, *Air Quality Permits,* Sections .0101, *Required Air Quality Permits,* and .0301, *Applicability,* which have a state effective date of November 11, 2005. 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).

[1] EPA received this SIP submittal on April 4, 2006.

[2] In the table of North Carolina regulations federally approved into the SIP at 40 CFR 52.1770(c), 15A NCAC 02D is referred to as ''Subchapter 2D Air Pollution Control Requirements.''

[3] On July 18, 2017, EPA took direct final action on changes to 15A NCAC 02D Sections .0101, .0103, .0810, .1902, .1903, and 15A NCAC 2Q Sections .0103, .0105, .0304, .0305, .0808 and .0810. *See* 82 FR 32767. EPA will be taking separate action on changes to 15A NCAC 02D Sections .1904 and .2001. EPA did not take action on changes to 15A NCAC 2D Section .1201. because this rule pertains to incinerators and addresses emission guidelines under CAA sections 111(d) and 129 and 40 CFR part 60 and is not a part of the federally-approved SIP. A change to Regulation 15A NCAC 02D Section .1401 was withdrawn by NCDEQ on June 5, 2017. Changes to two regulations, 15A NCAC 02Q Sections .0508 and 0523, were not acted on because these rules are part of North Carolina's title V permitting program and are not a part of the SIP.

IV. Proposed Action

EPA is proposing to approve the aforementioned revisions to the North Carolina SIP submitted by the State of North Carolina on March 24, 2006, pursuant to section 110 because these changes are not inconsistent with the CAA and EPA's regulations. Changes to the other sections in these submissions have been or will be processed in a separate action, as appropriate, for approval into the North Carolina SIP.

V. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

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

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

Dated: December 21, 2018.

Mary S. Walker,

Acting Regional Administrator, Region 4.

[FR Doc. 2019–02216 Filed 2–13–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2018–0829; FRL–9989–01–Region 1]

Air Plan Approval; Massachusetts; Nonattainment New Source Review Program Revisions; Infrastructure Provisions for National Ambient Air Quality Standards; Nonattainment New Source Review Requirements for the 2008 8-Hour Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. On February 9, 2018, the Massachusetts Department of Environmental Protection (MassDEP) submitted revisions to the EPA satisfying the MassDEP's earlier commitment to adopt and submit provisions that meet certain requirements of the Nonattainment New Source Review (NNSR) air permit program regulations. The EPA is also proposing to approve the Commonwealth's NNSR certification, which was included in the February 9, 2018 SIP revision, as sufficient for the purposes of satisfying the 2008 8-hour ozone National Ambient Air Quality Standard (NAAQS). In addition, this action will also convert the EPA's December 21, 2016 conditional approval for certain infrastructure provisions relating to Massachusetts's NNSR air permit program to full approval. This action is being taken under the Clean Air Act.

DATES: Written comments must be received on or before March 18, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–OAR–2018–0829 at *https://www.regulations.gov,* or via email to *wortman.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 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: Eric Wortman, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA Region 1, 5 Post Office Square—Suite 100 (Mail Code OEP05–2), Boston, MA 02109–3912, tel. (617) 918–1624, email *wortman.eric@epa.gov.*

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

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I. Massachusetts's February 9, 2018 SIP Submittal Addressing the EPA's December 21, 2016 Conditional Approval Regarding 310 CMR 7.00

A. What is the background information for the EPA's December 21, 2016 conditional approval?

On December 21, 2016, the EPA published a final conditional approval for Massachusetts's June 6, 2014 SIP submittal. *See* 81 FR 93627. That conditional approval identified a number of issues. One of those issues relates to a provision under Section 110(a)(2)(D)(i)(II) of the Clean Air Act (CAA) that was not included in the Commonwealth's June 6, 2014 SIP submittal. In a letter dated June 14, 2016, the Commonwealth committed to submitting for inclusion in the SIP, by a date no later than one year from conditional approval of Massachusetts's infrastructure SIP submissions, the necessary provisions that would address the identified issues. The conditional approval was part of the EPA's December 21, 2016 final action on Massachusetts's infrastructure SIP submittal for the 1997 ozone, 2008 lead (Pb), 2008 ozone, 2010 nitrogen dioxide (NO_2), and 2010 sulfur dioxide (SO_2) NAAQS. *See* 81 FR 93627.

B. What is a conditional approval?

Under section 110(k)(4) of the CAA, the EPA may conditionally approve a plan based on a commitment from the state to adopt specific enforceable measures by a date no later than one year from the effective date of final conditional approval. If the EPA subsequently determines that the state has met its commitment, the EPA publishes a document in the **Federal Register** notifying the public that the EPA is converting the conditional approval to a full approval.

Otherwise, if the state fails to meet its commitment in a timely manner, then the conditional approval automatically converts to a disapproval. If that were to occur, the EPA would then notify the state by letter. At that time, the conditionally approved SIP revisions would not be part of the state's approved SIP. The EPA subsequently would publish a document in the **Federal Register** notifying the public that the conditional approval had converted to a disapproval.

The EPA's December 21, 2016 conditional approval required the MassDEP to submit revised regulations that address Prong 3 of Section 110(a)(2)(D)(i)(II) of the CAA. To address the conditional approval, on February 9, 2018, the MassDEP submitted regulatory provisions for approval into the Commonwealth's SIP. As explained in Section I.C of this document, the revisions addressed the NNSR requirements that would make the Commonwealth's NNSR program applicable to sources regardless of the attainment status of the area where the source is located. These revisions were necessary because Massachusetts is located in the Ozone Transport Region (OTR).[1]

C. Were the terms of the December 21, 2016 conditional approval met?

Section 110(a)(2)(D) contains a comprehensive set of air quality management elements pertaining to the transport of air pollution that states must address. It covers the following five topics, categorized as sub-elements: Sub-element 1, Contribute to nonattainment, and interfere with maintenance of a NAAQS; Sub-element 2, Prevention of Significant Deterioration (PSD); Sub-element 3, Visibility protection; Sub-element 4, Interstate pollution abatement; and Sub-element 5, International pollution abatement. Sub-elements 1 through 3 are found under section 110(a)(2)(D)(i) of the Act, and these items are further categorized into four prongs.

One aspect of section 110(a)(2)(D)(i)(II) requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality in another state. The EPA sometimes refers to this requirement under subsection 110(a)(2)(D)(i)(II) as prong 3. A state's infrastructure SIP submittal cannot be considered approvable for prong 3 of 110(a)(2)(D)(i)(II) unless the EPA has issued final approval of the state's PSD SIP, or alternatively, has issued final approval of a SIP that the EPA has otherwise found adequate to prohibit interference with other states' measures to prevent significant deterioration of air quality.

Under prong 3 of 110(a)(2)(D)(i)(II), the EPA also reviews the potential for in-state sources not subject to PSD to interfere with PSD in an attainment or unclassifiable area of another state. EPA guidance recommends that a ''fully approved NNSR program with respect to any previous NAAQS may generally be considered by the EPA as adequate for purposes of meeting this requirement of prong 3 with respect to sources and pollutants subject to such program.''[2] The EPA last approved the Commonwealth's NNSR program on October 27, 2000. *See* 65 FR 64360. Because Massachusetts is located within the OTR,[3] the CAA requires sources emitting 100 tons per year (tpy) or more of nitrogen oxides (NO_X) or 50 tpy or more of volatile organic compounds (VOCs) located in attainment or unclassifiable areas to be subject to the requirements that would be applicable to major stationary sources if the area were classified as a moderate nonattainment area. *See* CAA sections 182(f)(1), 184(b)(2), 42 U.S.C. 7511a, 7511c. In other words, even if located in an area designated attainment or unclassifiable for ozone, under the CAA and its implementing regulations, such sources are subject to NNSR rather than PSD. The major source threshold for NNSR in Massachusetts is currently 50 tpy for NO_X instead of 100 tpy due to the fact that part of Massachusetts had

[1] CAA section 184 details specific requirements for a group of states (and the District of Columbia) that make up the OTR. States in the OTR are required to mandate a certain level of emissions control for the pollutants that form ozone, even if the areas in the state meet the ozone standards. Thus, NNSR permitting requirements apply statewide, even if the state is designated attainment for the ozone NAAQS.

[2] *See* page 32 of EPA's September 13, 2013 guidance titled ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2).''

[3] *See* CAA 184(a), 42 U.S.C. 7511c(a).

been designated in 1990 as a serious nonattainment area for the 1979 1-hour ozone standard.[4] [5] Massachusetts's current SIP-approved NNSR regulations, however, apply only in nonattainment areas,[6] meaning that sources with 50 tpy (*see* footnote 5) or more of either VOCs or NO_X emissions in much of Massachusetts are not covered by either the PSD federal implementation plan (FIP), applicable in the Commonwealth, or the Commonwealth's EPA-approved NNSR program. Thus, the Commonwealth has not shown that it has met this requirement of prong 3. However, as a matter of state regulation, the Commonwealth has promulgated and implements NNSR regulations that make the Commonwealth's NNSR program applicable to such sources regardless of area designation. We are proposing to approve these regulations into the Commonwealth's SIP.

On February 9, 2018, MassDEP submitted the necessary provisions for inclusion into the SIP to make its EPA-approved NNSR program applicable to such sources and address the relevant issues identified in the EPA's December 21, 2016 conditional approval. Specifically, MassDEP's SIP submittal included the following revisions to 310 CMR 7.00: Appendix A for inclusion in the SIP:

- The *Introduction* in section (1) of Appendix A was revised to clarify that any source that is major for VOCs or NO_X is subject to the requirements in Appendix A.
- Section (b) of the definition of *Major Modification* was revised to remove the requirement that a major source must be located in an ozone nonattainment area for the purpose of applying the requirements of Appendix A.
- Section (b) of the definition of *Major Stationary Source* was revised to remove the requirement that a major stationary source of NO_X must be located in an ozone nonattainment area for the purpose of applying the requirements of Appendix A.
- The definition of *Nonattainment Pollutant* was added to clarify that NO_X and VOCs are considered nonattainment pollutants regardless of the attainment designation status where the source is located.
- Section (3) of Appendix A was revised at subsection (b) to include the requirement for Appendix A to apply if a new major stationary source or major modification is major for NO_X or VOCs.

Massachusetts failed to submit the technical demonstration in a timely manner. Therefore, our conditional approval became a disapproval on January 20, 2018. However, as noted previously, on February 9, 2018, the MassDEP submitted SIP revisions to the EPA to address the issues identified in the December 21, 2016 conditional approval under prong 3 of Section 110(a)(2)(D)(i)(II), effectively remedying the disapproval relating to that provision of the CAA. The EPA has reviewed MassDEP's SIP submittal and determined that MassDEP's regulations are consistent with the underlying federal NNSR regulations in 40 CFR part 51 and meet the terms of the December 21, 2016 conditional approval. Accordingly, the EPA is proposing to approve the revisions into the SIP and convert the December 21, 2016 conditional approval to a full approval for prong 3 of Section 110(a)(2)(D)(i)(II).

II. Proposed Approval of NNSR Certification

A. Background on the 2008 8-Hour Ozone NAAQS

On March 12, 2008, the EPA promulgated a revised 8-hour ozone NAAQS of 0.075 parts per million (ppm). *See* 73 FR 16436 (March 27, 2008). Under the EPA's regulations at 40 CFR 50.15, the 2008 8-hour ozone NAAQS is met at an ambient air quality monitoring site when the 3-year average of the annual fourth-highest daily maximum 8-hour average ambient air quality ozone concentration is less than or equal to 0.075 ppm. Ambient air quality monitoring data for the 3-year period must meet a data completeness requirement. The ambient air quality monitoring data completeness requirement is met when the average percent of days with valid ambient monitoring data is at least 90 percent, and no single year has less than 75 percent data completeness as determined in Appendix I of part 50.

Upon promulgation of a new or revised NAAQS, the CAA requires the EPA to designate as nonattainment any area that is violating the NAAQS based on the three most recent years of certified ambient air quality data. Dukes County in Massachusetts was designated nonattainment for the 2008 8-hour ozone NAAQS on April 30, 2012 using 2009–2011 ambient air quality data. *See* 77 FR 30088 (May 21, 2012). At the time of designation, Dukes County was classified as a marginal nonattainment area. On March 6, 2015, the EPA issued a final rule entitled, ''Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements'' (SIP Requirements Rule), which established the requirements that state, tribal, and local air quality management agencies must meet in developing implementation plans for areas where ozone concentrations exceed the 2008 8-hour ozone NAAQS.[7] *See* 80 FR 12264. Areas that were designated as marginal nonattainment areas for the 2008 8-hour ozone NAAQS were required to attain no later than July 20, 2015, based on 2012–2014 monitoring data. *See* 40 CFR 51.1103. The Dukes County nonattainment area attained the 2008 8-hour ozone NAAQS by July 20, 2015, and therefore on April 11, 2016, the EPA Administrator signed a final determination of attainment for the 2008 8-hour ozone standard for the Dukes County nonattainment area. *See* 81 FR 26697 (May 4, 2016).

Based on initial nonattainment designations for the 2008 8-hour ozone standard, as well as the March 6, 2015 final SIP Requirements Rule, Massachusetts was required to develop a SIP revision addressing certain CAA requirements for the Dukes County nonattainment area, and submit to the EPA an NNSR Certification SIP or SIP revision no later than 36 months after the effective date of area designations for the 2008 8-hour ozone NAAQS (*i.e.,* July 20, 2015).[8] [9] Because Massachusetts

[4] On November 6, 1991, the EPA promulgated designations for the 1979 1-hour ozone standard. *See* 56 FR 56694 (November 6, 1991).

[5] Because Massachusetts is in the OTR, the major source threshold for VOCs is 50 tpy.

[6] At the time the EPA last approved Massachusetts's NNSR regulations (October 27, 2000; 65 FR 64361), the Western Massachusetts area was nonattainment for the 1979 1-hour ozone NAAQS, and the Eastern Massachusetts area was attaining that NAAQS. The Eastern Massachusetts area became nonattainment as of January 16, 2001 when the EPA reinstated the 1-hour ozone NAAQS for that area. *See* 65 FR 45181 (July 20, 2000).

[7] The SIP Requirements Rule addresses a range of nonattainment area SIP requirements for the 2008 ozone NAAQS, including requirements pertaining to attainment demonstrations, reasonable further progress (RFP), reasonably available control technology, reasonably available control measures, major new source review, emission inventories, and the timing of SIP submissions and of compliance with emission control measures in the SIP. The rule also revokes the 1997 ozone NAAQS and establishes anti-backsliding requirements.

[8] Where an air agency determines that the provisions in or referred to by its existing EPA approved SIP are adequate with respect to a given infrastructure SIP element (or sub-element) even in light of the promulgation of a new or revised NAAQS, the air agency may make a SIP submission in the form of a certification. This type of infrastructure SIP submission may, *e.g.,* take the form of a letter to the EPA from the Governor or her/his designee containing a ''certification'' (or declaration) that the already-approved SIP contains or references provisions that satisfy all or some of the requirements of section 110(a)(2), as applicable, for purposes of implementing the new or revised NAAQS.

[9] Massachusetts's obligation to submit the NNSR Certification SIP was not affected by the D.C.

Continued

already has a NNSR program that applies statewide, Massachusetts can certify the adequacy of its existing NNSR program with respect to the 2008 ozone NAAQS for the Dukes County nonattainment area.[10] *See* 40 CFR 51.1114.

On February 3, 2017, the EPA found that 15 states (including the Commonwealth of Massachusetts) and the District of Columbia failed to submit SIP revisions in a timely manner to satisfy certain requirements for the 2008 8-hour ozone NAAQS that apply to nonattainment areas and/or states in the ozone transport region.[11] *See* 82 FR 9158. As explained in that rulemaking action, consistent with the CAA and EPA regulations, these findings of failure to submit established certain deadlines for the imposition of sanctions if a state does not submit a timely SIP revision addressing the requirements for which the finding is being made, and for the EPA to promulgate a federal implementation plan (FIP) to address any outstanding SIP requirements.

MassDEP submitted its February 9, 2018 SIP revision to address the specific NNSR requirements for the 2008 8-hour ozone NAAQS, located in 40 CFR 51.160–165, as well as its obligations under the EPA's February 3, 2017 Findings of Failure to Submit. The 18-month sanctions clock stopped when MassDEP submitted the SIP revision and the SIP revision became complete by operation of law on August 9, 2018. The EPA's analysis of how this SIP revision addresses the NNSR requirements for the 2008 8-hour ozone NAAQS is provided in Section II.B.

B. Analysis of Massachusetts's NNSR Requirements

The minimum SIP requirements for NNSR permitting programs for the 2008 8-hour ozone NAAQS are located in 40 CFR 51.165. These NNSR program requirements include those promulgated in the ''Phase 2 Rule'' implementing the 1997 8-hour ozone NAAQS [12] and the SIP Requirements Rule implementing the 2008 8-hour ozone NAAQS. Under the Phase 2 Rule, the SIP for each ozone nonattainment area must contain NNSR provisions that: Set major source thresholds for NO_X and VOCs pursuant to 40 CFR 51.165(a)(1)(iv)(A)(*1*)(*i*) through (*iv*) and (*2*); classify physical changes at a major source if the change would constitute a major source by itself pursuant to 40 CFR 51.165(a)(1)(iv)(A)(*3*); consider any significant net emissions increase of NO_X as a significant net emissions increase for ozone pursuant to 40 CFR 51.165(a)(1)(v)(E); consider increases of VOCs emissions in extreme ozone nonattainment areas as significant net emissions increases and major modifications for ozone pursuant to 40 CFR 51.165(a)(1)(v)(F); set significant emissions rates for VOCs and NO_X as ozone precursors pursuant to 40 CFR 51.165(a)(1)(x)(A) through (C) and (E); contain provisions for emissions reductions credits pursuant to 40 CFR 51.165(a)(3)(ii)(C)(*1*) and (*2*); provide that the requirements applicable to VOCs also apply to NO_X pursuant to 40 CFR 51.165(a)(8); and set offset ratios for VOCs and NO_X pursuant to 40 CFR 51.165(a)(9)(i) through (iii) (renumbered as (a)(9)(ii) through (iv) under the SIP Requirements Rule for the 2008 8-hour ozone NAAQS). Under the SIP Requirements Rule for the 2008 8-hour ozone NAAQS, the SIP for each ozone nonattainment area designated nonattainment for the 2008 8-hour ozone NAAQS and designated nonattainment for the 1997 ozone NAAQS on April 6, 2015, must also contain NNSR provisions that include the anti-backsliding requirements at 40 CFR 51.1105.

Massachusetts's longstanding SIP-approved NNSR program, established in the Code of Massachusetts Regulations (CMR) at Appendix A to 310 CMR 7.00, applies to the construction and modification of stationary sources, including major stationary sources in nonattainment areas. In its SIP revision, Massachusetts certifies that its existing NNSR regulations at 310 CMR 7.00: Appendix A satisfy the requirements of Section 182(a) of the CAA for the 2008 ozone NAAQS as specified in 40 CFR 51.165 for the Dukes County nonattainment area (*see* footnote 9).

The EPA last approved revisions to the SIP-approved version of Massachusetts's NNSR rule in 2000, addressing, among other things, revisions under the 1990 CAA amendments and other general NNSR permitting requirements. *See* 65 FR 64360 (October 27, 2000). Massachusetts's SIP-approved NNSR regulations retain the NNSR requirements applicable to serious nonattainment areas, even though the Dukes County nonattainment area was classified as marginal nonattainment under the 2008 8-hour ozone NAAQS. Dukes County was previously classified serious nonattainment as part of the Boston-Lawrence-Worcester (E. Mass) nonattainment area on November 15, 1990 for the 1-hour ozone NAAQS. *See* 56 FR 56694 (November 6, 1991).

Massachusetts's existing NNSR regulations and the revisions proposed in the February 9, 2018 SIP submittal for inclusion in the SIP are at least as stringent as the federal NNSR requirements and satisfy the requirements of the Phase 2 Rule and SIP Requirements Rule discussed previously. The definitions of ''major modification,'' ''major stationary source,'' ''significant,'' and ''nonattainment pollutant'' in 310 CMR 7.00: Appendix A are consistent with federal NNSR regulations. In addition, the definition of ''major stationary source'' and ''major modification'' properly address the thresholds for VOCs and NO_X, as precursors to ozone, by establishing the threshold for each of these ozone precursors at 50 tons per year. This threshold for a major modification is consistent with the EPA regulations for serious nonattainment areas. Massachusetts's NNSR regulations also contain the appropriate provisions for determining emissions reduction credits due to shutdowns, establishing offset ratios, and treating NO_X as a precursor to ozone. Lastly, since Massachusetts's NNSR SIP retains the NO_X and VOCs thresholds for a serious nonattainment area for ozone that are based on how the Commonwealth was designated nonattainment on November 15, 1990 for the 1-hour ozone standard, the Commonwealth's SIP meets the anti-backsliding requirements.

The EPA notes that neither 310 CMR 7.00: Appendix A nor Massachusetts's approved SIP have the regulatory provision for any emissions change of VOCs in extreme nonattainment areas, specified in 40 CFR 51.165(a)(1)(v)(F), because Massachusetts has never had an

Circuit Court's February 16, 2018 decision on portions of the SIP Requirements Rule in *South Coast Air Quality Mgmt. Dist.* v. *EPA.*

[10] Massachusetts's February 9, 2018 certification of adequacy that the SIP meets the NNSR requirements for the 2008 ozone NAAQS relies on the inclusion of the SIP revisions proposed for approval in Section I of this action.

[11] States have three years after the effective date of designation for the 2008 8-hour ozone NAAQS to submit SIP revisions addressing NNSR for their nonattainment areas. *See* 40 CFR 51.1114. Massachusetts's SIP revision certified that its SIP-approved state regulation addressing nonattainment new source review for all new stationary sources and modified existing stationary sources in the State exceeds the requirements of section 182(a)(2)(C) for the 2008 8-hour ozone NAAQS. However, EPA does not believe that the two-year deadline contained in CAA section 182(a)(2)(C) applies to NNSR SIP revisions for implementing the 8-hour ozone NAAQS. *See* 80 FR 12264, 12267 (March 6, 2015); 70 FR 71612, 71683 (November 29, 2005). The submission of NNSR SIPs due on November 15, 1992, satisfied the requirement for states to submit NNSR SIP revisions to meet the requirements of CAA sections 172(c)(5) and 173 within two years after the date of enactment of the 1990 CAA Amendments. *Id.*

[12] *See* 70 FR 71612 (November 29, 2005).

area designated extreme nonattainment for any of the ozone NAAQS. The Massachusetts SIP is not required to have this provision for VOCs in extreme nonattainment areas until such time as Massachusetts has an extreme ozone nonattainment area.

III. Proposed Action

The EPA's review of MassDEP's February 9, 2018 SIP submittal indicates that the submittal satisfies the requirements of the CAA and is appropriate for inclusion into the SIP. The EPA therefore is proposing to approve the SIP revisions discussed in this action. Also, as a result of our proposed approval of the NNSR permitting revisions discussed in Section I, the EPA is proposing to convert the December 21, 2016 conditional approval to a full approval for prong 3 of CAA section 110(a)(2)(D)(i)(II). Other aspects of EPA's December 21, 2016 conditional approval will be addressed in other actions.

The EPA is also proposing to approve MassDEP's February 9, 2018 SIP revision addressing the NNSR requirements for the 2008 ozone NAAQS for the Dukes County Nonattainment Area. The EPA has concluded that MassDEP's submission fulfills the 40 CFR 51.1114 revision requirement, meets the requirements of CAA sections 110 and 172 and the minimum SIP requirements of 40 CFR 51.165, as well as its obligations under the EPA's February 3, 2017 Findings of Failure to Submit relating to submission of a NNSR certification. The EPA is soliciting public comments on the issues discussed in this action 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**.

IV. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference of Massachusetts's 310 CMR 7.00: Appendix A. 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).

V. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders12866 (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, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides, Volatile organic compounds.

Dated: February 7, 2019.

Deborah Szaro,

Acting Regional Administrator, EPA Region 1.

[FR Doc. 2019–02203 Filed 2–13–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2017–0583; FRL–9989–34–Region 5]

Air Plan Approval; Illinois; Infrastructure SIP Requirements for the 2012 $PM_{2.5}$ NAAQS; Interstate Transport

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve elements of the State Implementation Plan (SIP) submission from the Illinois Environmental Protection Agency (IEPA) regarding the infrastructure requirements of section 110 of the Clean Air Act (CAA) for the 2012 annual fine particulate matter ($PM_{2.5}$) National Ambient Air Quality Standard (NAAQS or standard). The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA. This action pertains specifically to infrastructure requirements in the Illinois SIP concerning interstate transport provisions.

DATES: Comments must be received on or before March 18, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2017–0583 at *http://*

www.regulations.gov, or via email to *aburano.douglas@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Samantha Panock, 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) 353–8973, *panock.samantha@epa.gov.*

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

I. What is the background of this SIP submission?
II. What guidance and memoranda is EPA using to evaluate this SIP submission?
III. IEPA's Analysis and Conclusion
IV. EPA's Additional Analysis, Review, and Conclusion
V. What action is EPA taking?
VI. Statutory and Executive Order Reviews

I. What is the background of this SIP submission?

This rulemaking addresses a submission from the IEPA dated September 29, 2017, which describes its infrastructure SIP for the 2012 annual $PM_{2.5}$ NAAQS (78 FR 3086). Specifically, this rulemaking addresses the portion of the submission dealing with interstate pollution transport under CAA Section 110(a)(2)(D)(i), otherwise known as the ''good neighbor'' provision. The requirement for states to make a SIP submission of this type arises from Section 110(a)(1) of the CAA, pursuant to which states must submit ''within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof),'' a plan that provides for the ''implementation, maintenance, and enforcement'' of such NAAQS. Section 110(a)(2) of the CAA includes a list of specific elements that ''each such plan'' submission must address. EPA commonly refers to such state plans as ''infrastructure SIPs.'' State plans must address four requirements of the good neighbor provisions (commonly referred to as ''prongs''), including:

—*Prong 1:* Prohibiting any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS in another state;

—*Prong 2:* Prohibiting any source or other type of emissions activity in one state from interfering with maintenance of the NAAQS in another state;

—*Prong 3:* Prohibiting any source or other type of emissions activity in one state from interfering with measures required to prevent significant deterioration (PSD) of air quality in another state; and

—*Prong 4:* Protecting visibility in another state.

This rulemaking is evaluating whether Illinois' interstate transport provisions in its $PM_{2.5}$ infrastructure SIP meet prongs one and two of the good neighbor requirements of the CAA. Prongs three and four will be evaluated in a separate rulemaking.

EPA has developed a consistent framework for addressing the prong one and two interstate transport requirements with respect to the $PM_{2.5}$ NAAQS in several previous Federal rulemakings. The four basic steps of that framework include: (1) Identifying downwind receptors that are expected to have problems attaining or maintaining the NAAQS; (2) identifying which upwind states contribute to these identified problems in amounts sufficient to warrant further review and analysis; (3) for states identified as contributing to downwind air quality problems, identifying upwind emissions reductions necessary to prevent an upwind state from significantly contributing to nonattainment or interfering with maintenance of the NAAQS downwind; and (4) for states that are found to have emissions that significantly contribute to nonattainment or interfere with maintenance of the NAAQS downwind, reducing the identified upwind emissions through adoption of permanent and enforceable measures. This framework was most recently applied with respect to $PM_{2.5}$ in the August 8, 2011 Cross-State Air Pollution Rule (CSAPR) (76 FR 48208), designed to address both the 1997 and 2006 $PM_{2.5}$ standards, as well as the 1997 and 2008 ozone standards.

II. What guidance and memoranda is EPA using to evaluate this SIP submission?

EPA highlighted the statutory requirement to submit infrastructure SIPs within three years of promulgation of a new NAAQS in an October 2, 2007 guidance document entitled ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards.'' EPA has issued additional guidance documents and memoranda, including a September 13, 2013, guidance document titled ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2).''

The most recent relevant document is a memorandum published on March 17, 2016, titled ''Information on the Interstate Transport 'Good Neighbor' Provision for the 2012 Fine Particulate Matter National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I)'' (2016 memorandum). The 2016 memorandum describes EPA's consistent approach over the years to address interstate transport and provides EPA's general review of relevant modeling data and air quality projections as they relate to the 2012 annual $PM_{2.5}$ NAAQS. The 2016 memorandum provides information relevant to EPA Regional office review of CAA Section 110 (a)(2)(D)(i)(I) ''good neighbor'' provision in infrastructure SIPs with respect to the 2012 annual $PM_{2.5}$ NAAQS. IEPA's submittal and this rulemaking consider information provided in that memorandum.

The 2016 memorandum provides states and EPA Regional offices with future year annual $PM_{2.5}$ design values for monitors in the United States based on quality assured and certified ambient monitoring data and air quality modeling. The 2016 memorandum further describes how these projected potential design values can be used to help determine which monitors should be further evaluated to potentially address whether emissions from other states significantly contribute to nonattainment or interfere with

maintenance of the 2012 annual $PM_{2.5}$ NAAQS at those sites. The 2016 memorandum explains that, for purposes of addressing interstate transport for the 2012 $PM_{2.5}$ NAAQS, it may be appropriate to evaluate projected air quality in 2021, which is the attainment deadline for 2012 $PM_{2.5}$ NAAQS nonattainment areas classified as Moderate. Accordingly, because the available data includes 2017 and 2025 projected average and maximum $PM_{2.5}$ design values calculated through the CAMx photochemical model, the 2016 memorandum suggests approaches states might use to interpolate $PM_{2.5}$ values at sites in 2021. The 2016 memorandum indicates that it may be reasonable to assume receptors projected to have average and/or maximum design values above the NAAQS in both 2017 and 2025 are also likely to be either nonattainment or maintenance receptors in 2021. Similarly, the 2016 memorandum indicates that it may be reasonable to assume that receptors that are projected to attain the NAAQS in both 2017 and 2025 are also likely to be attainment receptors in 2021. However, where a potential receptor is projected to be nonattainment or maintenance in 2017, but projected to be attainment in 2025, the 2016 memorandum suggests that further analysis of the emissions and modeling may be needed to make a further judgement regarding the receptor status in 2021.

The 2016 memorandum indicates that for all but one monitoring site in the eastern United States, with complete and valid $PM_{2.5}$ design values from 2009 to 2013, the modeling data shows that monitors were expected to both attain and maintain the 2012 annual $PM_{2.5}$ NAAQS in both 2017 and 2025. The modeling results provided in the 2016 memorandum show that out of seven $PM_{2.5}$ monitors located in Allegheny County, Pennsylvania (PA), one monitor is expected to be above the 2012 annual $PM_{2.5}$ NAAQS in 2017. Further, that monitor, the Liberty monitor (ID number 420030064), is projected to be above the NAAQS only under the model's maximum projected conditions (used in EPA's interstate transport framework to identify maintenance receptors) and is projected to both attain and maintain the NAAQS (along with all Allegheny County monitors) in 2025. The 2016 memorandum therefore indicates that under such a condition (where EPA's photochemical modeling indicates an area will maintain the 2012 annual $PM_{2.5}$ NAAQS in 2025 but not attain in 2017) further analysis of the site should be performed to determine if the site may be a nonattainment or maintenance receptor in 2021 (the attainment deadline for moderate $PM_{2.5}$ areas).

The 2016 memorandum also indicates that based on modeling projections, there are 17 potential nonattainment or maintenance receptors in California, located in the San Joaquin Valley and South Coast nonattainment areas, and one potential receptor in Shoshone County, Idaho.

The 2016 memorandum also indicates that for certain states with incomplete ambient monitoring data, additional information including the latest available data should be analyzed to determine whether there are potential downwind air quality problems that may be impacted by transported emissions. These states include all or portions of Florida, Illinois, Idaho (outside of Shoshone County), Tennessee, and Kentucky. With the exception of four counties in Florida, the data quality problems have subsequently been resolved for these areas, and these areas now have current design values below the 2012 annual $PM_{2.5}$ NAAQS and are expected to maintain the NAAQS due to downward emission trends for nitrogen oxides (NO_X) and sulfur dioxide (SO_2).

IEPA's submittal indicates that the state used data from the 2016 memorandum and supplied its own additional information in its analysis. EPA considered the analysis from IEPA, as well as additional analysis conducted by EPA, in its review of the IEPA submittal.

III. IEPA's Analysis and Conclusion

IEPA's submittal contains a technical analysis of its interstate transport of pollution relative to the 2012 annual $PM_{2.5}$ NAAQS. As reflected in the EPA's 2016 memorandum, the only receptor identified as nonattainment or maintenance on which Illinois was deemed to have significant impact is the Liberty monitor (42–003–0064) in Allegheny County, PA located in southwest PA. In this technical analysis IEPA examined geographical, meteorological, and emissions factors to evaluate impacts on the Allegheny monitor. As stated previously, IEPA's technical analysis considers CSAPR rule implementation and EPA guidance and memoranda. IEPA did not focus on potential contribution to other areas EPA identified as not attaining the 2012 annual $PM_{2.5}$ NAAQS based on monitor data in Alaska, California, Idaho, Nevada, or Hawaii. The distance between Illinois and these areas, coupled with the prevailing wind directions, leads IEPA to conclude that Illinois will not contribute significantly to any of the potential receptors in those states. Since the Allegheny County, PA, receptor is the only location considered downwind of Illinois, this submission focuses on that single receptor. IEPA concluded that Illinois contributes no significant impacts to the maintenance and attainment of NAAQS for $PM_{2.5}$ in Allegheny County, PA, and therefore existing measures satisfy Illinois' responsibilities under CAA Section 110(a)(2)(D)(i)(I).

IEPA's submission discussed geographical factors that show Illinois does not contribute to the nonattainment issues at the Allegheny monitor. As stated in IEPA's submittal, Illinois' nearest point to the Allegheny monitor is about 400 miles away. At this large distance, $PM_{2.5}$ precursor emissions from Illinois are thoroughly dispersed in the atmosphere long before reaching PA. Furthermore, Illinois is required to control electric generation units (EGU) year-round to meet annual budgets of NO_X and SO_2 associated with CSAPR, so the Illinois contribution to long-range transport is already being minimized.

IEPA's submission included a wind rose from the Pittsburgh/Allegheny airport to demonstrate that the dominant wind directions in the monitor area are south through west, with the highest frequency from the south. Local emitting sources located south and west of the monitor were identified by IEPA in this submittal. Some sources include Clairton Coke Works (1.3 miles south) and U.S. Steel Corporation (2.0 miles west). The 2011 emissions totals for all the identified sources were 702 tons/year (TPY) of primary $PM_{2.5}$, 3,075 TPY of NO_X, and 1,468 TPY of SO_2. These large sources of $PM_{2.5}$ and precursors of $PM_{2.5}$ near the monitor line up with prevailing wind directions in that area, leading IEPA to conclude that these sources largely contribute to the nonattainment issues at the Allegheny monitor.

IEPA's submission evaluated the Illinois emissions data from federal inventories of NO_X and SO_2. Emissions of NO_X and SO_2 have been steadily decreasing since the early 2000s due to state and federal control requirements. The emissions of NO_X and SO_2 in Illinois from all identified source categories have decreased by 48.5% and 64%, respectively, since 2002. Illinois' implementation of Tier 3 vehicle emission fuel standards will further reduce the on-road emissions going forward.

IEPA concludes that that no further measures are necessary to satisfy Illinois' responsibilities under CAA Section 110(a)(2)(D)(i)(I), because

Illinois does not contribute to projected nonattainment or maintenance issues at the Liberty monitor site. Instead, IEPA found that ambient air traveling from westerly and southernly winds and large sources of primary $PM_{2.5}$, NO_X, and SO_2 in PA near the Allegheny monitor are more likely contributing to projected nonattainment or maintenance issues at the site.

IV. EPA's Additional Analysis, Review, and Conclusion

The modeling information contained in EPA's 2016 memorandum shows that one monitor in Allegheny County, PA (the Liberty monitor, 420030064) may have a maintenance issue in 2017, but is projected to both attain and maintain the NAAQS by 2025. A linear interpolation of the modeled design values to 2021 shows that the monitor is likely to both attain and maintain the standard by 2021. Emissions and air quality data trends help to corroborate this interpolation.

Over the last decade, local and regional emissions reductions of primary $PM_{2.5}$, SO_2, and NO_X, have led to large reductions in annual $PM_{2.5}$ design values in Allegheny County, PA. In 2007, all of Allegheny County's $PM_{2.5}$ monitors exceeded the level of the 2012 annual $PM_{2.5}$ NAAQS (the 2005–2007 annual average design values ranged from 12.9–19.8 micrograms per cubic meter (μg/m³), as shown in Table 1). The 2015–2017 annual average $PM_{2.5}$ design values now show that only one monitor (Liberty, at 13.0 μg/m³) exceeds the health-based annual $PM_{2.5}$ NAAQS of 12.0 μg/m³.

TABLE 1—$PM_{2.5}$ ANNUAL DESIGN VALUES IN μg/m³

Monitor	2005–2007	2006–2008	2007–2009	2008–2010	2009–2011	2010–2012	2011–2013	2012–2014	2013–2015	2014–2016	2015–2017
Avalon	.....	.....	.....	*16.3	*14.7	13.4	11.4	10.6	10.6	*10.4	*10.2
Lawrenceville	15.0	14.0	13.1	12.2	11.6	11.1	10.3	10.0	9.7	9.5	9.2
Liberty	19.8	18.3	17.0	16.0	15.0	14.8	13.4	13.0	12.6	12.8	13.0
South Fayette	12.9	*11.8	11.7	11.1	11.0	10.5	9.6	9.0	8.8	*8.5	*8.4
North Park	*13.0	*12.3	*11.3	*10.1	9.7	9.4	8.8	8.5	8.5	*8.2	*8.2
Harrison	15.0	14.2	13.7	13.0	12.4	*11.7	10.6	10.0	9.8	9.8	9.8
North Braddock	16.2	15.2	14.3	13.3	12.7	12.5	*11.7	11.4	11.2	11.0	10.8
Parkway East Near-Road	.....	.....	.....	.....	.....	.....	.....	.....	.....	*10.6	*10.6
Clairton	15.3	14.3	13.2	12.4	*11.5	*10.9	*9.8	9.5	9.8	*9.8	*9.8

*Value does not contain a complete year worth of data.

The Liberty monitor is already close to attaining the NAAQS and expected emissions reductions in the next three years will lead to additional reductions in measured $PM_{2.5}$ concentrations. There are both local and regional components to the measured $PM_{2.5}$ levels in Allegheny County and the greater Pittsburgh area. Previous CSAPR modeling showed that regional emissions from upwind states, particularly SO_2 and NO_X emissions, contribute to $PM_{2.5}$ nonattainment at the Liberty monitor. In recent years, large SO_2 and NO_X reductions from power plants have occurred in Pennsylvania and states upwind from the Greater Pittsburgh region. Based on existing CSAPR budgets, Pennsylvania's energy sector emissions of SO_2 will have decreased 166,000 tons between 2015–2017 as a result of CSAPR implementation. This is due to both the installation of emissions controls and retirements of electric generating units.

Between 2011 and 2016, 27.4 gigawatts of coal-fired EGUs have retired in Pennsylvania and the closest upwind states (West Virginia, Ohio, Kentucky, Indiana, Illinois, and Michigan) according to the Energy Information Administration's Preliminary Monthly Electric Generator Inventory, April 2017 (form EIA–860M, at *https://www.eia.gov/electricity/data/eia860m/xls/april_generator2017.xlsx*). In addition, between 2017 and 2021, an additional 8.8 gigawatts of coal-fired EGUs are expected to retire in the same upwind states. This includes large EGUs such as JM Stuart in Ohio (2,308 megawatts [MW]), Killen Station in Ohio (600 MW), WH Sammis in Ohio (720 MW), Michigan City in Indiana (469 MW), Will County in Illinois (510 MW), Baldwin Energy Complex in Illinois (576 MW), Paradise in Kentucky (1,230 MW), and Baily in Indiana (480 MW). These regional coal unit retirements will lead to further emissions reductions which will help ensure that Alleghany County monitors will not have nonattainment or maintenance issues by 2021.

In addition to regional emissions reductions and plant closures noted above, additional local reductions in both direct $PM_{2.5}$ and SO_2 emissions are also expected to occur and should also contribute to further declines in Allegheny County's $PM_{2.5}$ monitor concentrations. For example, significant SO_2 reductions will occur at U.S. Steel's integrated steel mill facilities in southern Allegheny County due to reductions required via federally-enforceable permits issued by Allegheny County to support its attainment plan submitted to meet requirements in CAA Section 172(c) for the 1-hr SO_2 NAAQS. Reductions occurred October 2018 largely due to declining sulfur content in the Clairton Coke Work's coke oven gas (COG) due to upgraded controls. Because this COG is burned at U.S. Steel's Clairton Coke Works, Irvin Mill, and Edgar Thompson Steel Mill, these reductions in sulfur content contribute to much lower $PM_{2.5}$ formation from precursors in the immediate future after October 4, 2018 as SO_2 is a precursor to $PM_{2.5}$. Additionally, the expected retirement of the Bruce Mansfield Power Plant by June 2021 should reduce precursor emissions from neighboring Beaver County, PA. The Allegheny County and Beaver County SO_2 SIP submissions, which EPA is reviewing pursuant to CAA requirements, also discuss expected lower SO_2 emissions in the Allegheny County area resulting from reduced sulfur content requirements in vehicle fuels, reductions in general emissions due to declining population in the Greater Pittsburgh region, and several shutdowns of significant emitters of SO_2 in Allegheny County.

Projected power plant closures and additional emissions controls in PA and upwind states will help further reduce both direct $PM_{2.5}$ and $PM_{2.5}$ precursors. Regional emission reductions will continue to occur from current on-the-books Federal and state regulations such as the Federal on-road and non-road vehicle programs, and various rules for major stationary emissions sources.

EPA modeling projections, the recent downward trend in local and upwind emissions reductions, the expected

continued downward trend in emissions between 2018 and 2021, and the downward trend in monitored $PM_{2.5}$ concentrations all indicate that the Liberty monitor will attain and be able to maintain the 2012 annual $PM_{2.5}$ NAAQS by 2021.

With respect to Florida, in the CSAPR modeling analysis for the 1997 $PM_{2.5}$ NAAQS, Florida did not have any potential nonattainment or maintenance receptors identified for the 1997 or 2006 $PM_{2.5}$ NAAQS. At this time, it is anticipated that this trend will continue; however, as there are ambient monitoring data gaps in the 2009–2013 data that could have been used to identify potential $PM_{2.5}$ nonattainment and maintenance receptors for Miami/Dade, Gilchrist, Broward and Alachua counties in Florida, the modeling analysis of potential receptors was not complete for these counties. However, the most recent ambient data (2015–2017) for these counties indicates design values well below the level of the 2012 annual $PM_{2.5}$ NAAQS. In addition, the highest value for these observed monitors is 8.0 $\mu g/m^3$ at the Hillsborough County monitor (12–057–3002), which is well below the NAAQS. This is also consistent with historical data: Complete and valid design values in the 2006–2008, 2007–2009 and/or 2008–2010 periods for these counties were all well below the 2012 annual $PM_{2.5}$ NAAQS. For these reasons, we find that none of the counties in Florida with monitoring gaps between 2009–2013 should be considered either nonattainment or maintenance receptors for the 2012 annual $PM_{2.5}$ NAAQS. For these reasons, we propose to find that emissions from Illinois will not significantly contribute to nonattainment or interfere with maintenance of the 2012 annual $PM_{2.5}$ NAAQS in Florida.

The conclusions of IEPA's analysis is consistent with EPA's expanded review of its submittal. The area (Allegheny County, PA) to which Illinois' sources potentially contribute is expected to attain and maintain the 2012 annual $PM_{2.5}$ NAAQS, and as demonstrated in IEPA's submittal, Illinois will not contribute to projected nonattainment or maintenance issues at any sites in 2021. IEPA's analysis shows that through permanent and enforceable measures currently contained in its SIP and other emissions reductions occurring in Illinois, monitored $PM_{2.5}$ air quality in the identified area that Illinois sources may impact will continue to improve, and that no further measures are necessary to satisfy Illinois' responsibilities under CAA section 110(a)(2)(D)(i)(I). Therefore, EPA is proposing that prongs one and two of the interstate pollution transport element of Illinois' infrastructure SIP are approvable.

V. What action is EPA taking?

EPA is proposing to approve a portion of IEPA's September 29, 2017 submittal certifying that the current Illinois SIP is sufficient to meet the required infrastructure requirements under CAA section 110(a)(2)(D)(i)(I), specifically prongs one and two, as set forth above.

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 CAA 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. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: December 21, 2018.

James O. Payne,

Acting Regional Administrator, Region 5.

[FR Doc. 2019–02214 Filed 2–13–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA–R09–OAR–2018–0831; FRL–9989–53–Region 9]

Finding of Failure To Attain and Reclassification of Pechanga Nonattainment Area for the 2008 Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to determine that the Pechanga Band of Luiseño Mission Indians of the Pechanga Reservation nonattainment area (''Pechanga nonattainment area'' or ''Pechanga area'') failed to attain the 2008 national ambient air quality standards for ozone (''ozone NAAQS'' or ''ozone standards'') by the applicable attainment date. The effect of failing to attain by the attainment date is that the ''Moderate'' Pechanga nonattainment area will be reclassified by operation of law to ''Serious'' upon the effective date of the final reclassification action. This proposed action, if finalized, would fulfill the EPA's statutory obligation to

determine whether ozone nonattainment areas attained the NAAQS by the attainment date.

DATES: Written comments must arrive on or before March 18, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2018–0831 at *https://www.regulations.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Laura Lawrence, EPA Region IX, (415) 972–3407, *lawrence.laura@epa.gov.*

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

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I. Regulatory Context

A. Ozone Standards

Ground-level ozone pollution is formed from the reaction of volatile organic compounds (VOCs) and oxides of nitrogen (NO_X) in the presence of sunlight. These two pollutants, referred to as ozone precursors, are emitted by many types of sources, including on-and off-road motor vehicles and engines, power plants and industrial facilities, and smaller area sources such as lawn and garden equipment and paints.

Scientific evidence indicates that adverse public health effects occur following exposure to elevated levels of ozone, particularly in children and adults with lung disease. Breathing air containing ozone can reduce lung function and inflame airways, which can increase respiratory symptoms and aggravate asthma or other lung diseases.[1]

Under section 109 of the Clean Air Act (CAA or ''Act''), the EPA promulgates NAAQS for pervasive air pollutants, such as ozone. The EPA has previously promulgated NAAQS for ozone in 1979 and 1997.[2] In 2008, the EPA revised and further strengthened the ozone NAAQS by setting the acceptable level of ozone in the ambient air at 0.075 parts per million (ppm) averaged over an 8-hour period.[3] Although the EPA further tightened the 8-hour ozone NAAQS to 0.070 ppm in 2015, this proposed action relates to the 2008 ozone NAAQS.[4]

B. Area Designations and Classifications

Following promulgation of a new or revised NAAQS, the EPA is required under CAA section 107(d) to designate areas throughout the country as attaining or not attaining the NAAQS, and the EPA designated all areas in the country for the 2008 ozone NAAQS in 2012.[5] With respect to the 2008 ozone NAAQS, the EPA classifies nonattainment areas under CAA section 181 and 40 CFR 51.1102 according to the severity of the ozone pollution problem, with classifications ranging from Marginal to Extreme. Attainment deadlines are determined by the nonattainment area's classification in accordance with CAA section 181(a)(1) and 40 CFR 51.1102. Nonattainment area classification also determines, in part, the emissions control requirements for ozone applicable to the area.

C. Determinations of Attainment or Failure To Attain

Section 181(b)(2) of the CAA requires the EPA to determine whether areas designated nonattainment for ozone attained the standards by the applicable attainment date.[6] Under EPA regulations at 40 CFR part 50, Appendix P, the 2008 ozone NAAQS is attained at a site when the 3-year average of the annual fourth highest daily maximum 8-hour average ambient air quality ozone concentration is less than or equal to 0.075 ppm. This 3-year average is referred to as the ''design value.'' When the design value is less than or equal to 0.075 ppm at each ambient air quality monitoring site within the area, the area is deemed to be attaining the ozone NAAQS.

Because the design value is based on the three most recent calendar years of complete, quality-assured data, an area must attain the standard by the end of the full calendar year prior to the attainment date.

The EPA's determination of attainment is based upon data that have been collected and quality-assured in accordance with 40 CFR part 58 and recorded in the EPA's Air Quality System (AQS) database.[7] Ambient air quality monitoring data for the 3-year period preceding the attainment date must meet the data completeness requirements in Appendix P.[8] The completeness requirements are met for the 3-year period at a monitoring site if daily maximum 8-hour average concentrations of ozone are available for at least 90 percent of the days within the ozone monitoring season, on average, for the 3-year period, and no single year has less than 75 percent data completeness.

To make the determination that an area attains the NAAQS, each monitor must have a valid design value meeting the standard.[9] If one or more monitors

[1] See ''Fact Sheet—2008 Final Revisions to the National Ambient Air Quality Standards for Ozone'' dated March 2008.

[2] The ozone NAAQS promulgated in 1979 was 0.12 parts per million (ppm) averaged over a 1-hour period. See 44 FR 8202 (February 8, 1979). The ozone NAAQS promulgated in 1997 was 0.08 ppm averaged over an 8-hour period. See 62 FR 38856 (July 18, 1997).

[3] 73 FR 16436 (March 27, 2008). The 2008 ozone NAAQS are codified at 40 CFR 50.15.

[4] Information on the 2015 ozone NAAQS is available at 80 FR 65292 (October 26, 2015).

[5] 77 FR 30088 (May 21, 2012). The initial area designations for the 2008 ozone NAAQS were effective July 20, 2012.

[6] In a recent rulemaking, the EPA proposed to make these determinations for most other areas in the country. See 83 FR 56781 (November 14, 2018).

[7] The EPA maintains the AQS, a database that contains ambient air pollution data collected by the EPA, state, local, and tribal air pollution control agencies. The AQS also contains meteorological data, descriptive information about each monitoring station (including its geographic location and its operator) and data quality assurance/quality control information. The AQS data are used to (1) assess air quality, (2) assist in attainment/nonattainment designations, (3) evaluate SIPs for nonattainment areas, (4) perform modeling for permit review analysis, and (5) prepare reports for Congress as mandated by the CAA. Access is through the website at *https://www.epa.gov/aqs.*

[8] 40 CFR part 50, Appendix P, section 2.3(b).

[9] Design values attaining the 2008 ozone NAAQS must also the meet minimum data completeness requirements specified in to 40 CFR part 50, Appendix P to be considered valid.

have a design value that exceeds the standard, the area does not attain the NAAQS.

D. Reclassification

In the event an area fails to attain the ozone NAAQS by the applicable attainment date, CAA section 181(b)(2)(A) requires the EPA to make the determination that the ozone nonattainment area failed to attain the ozone standard by the applicable attainment date, and requires the area to be reclassified by operation of law to the higher of either the next higher classification for the area, or the classification applicable to the area's design value as of the determination of failure to attain.

II. Proposed Determination and Rationale

A. Pechanga Ozone Nonattainment Area and Attainment Deadline

The Pechanga Band of Luiseño Mission Indians of the Pechanga Reservation (''Pechanga Tribe'') is a federally recognized tribe whose reservation (''Pechanga Reservation'') straddles the boundary between western Riverside and northern San Diego counties. The EPA designated the lands of the Pechanga Reservation as nonattainment for the 2008 ozone standards on May 21, 2012. At the time of designation, the nonattainment area consisted of the entirety of the Pechanga Reservation.[10]

At the time of designation, the Pechanga area was classified as a Moderate nonattainment area.[11] Moderate areas were given a deadline of July 20, 2018, to attain the 2008 ozone NAAQS. As noted above, because the design value is based on the three most recent calendar years of complete, quality-assured data, an area must attain the standard by the end of the full calendar year prior to the attainment date. In this case, to determine whether an area classified as Moderate for the 2008 ozone standards attained the standards by the July 20, 2018 attainment date, we rely on complete, quality-assured and certified ozone monitoring data from calendar years 2015, 2016, and 2017.

B. Determination of Failure To Attain

We are proposing to determine that the Pechanga nonattainment area failed to attain the 2008 ozone standards by the July 20, 2018 attainment date. We are proposing this determination on the basis of complete, quality-assured and certified data for 2015–2017 at the Temecula monitoring site (AQS ID 06–065–0016), which is located approximately 10 miles north of the Pechanga Reservation.[12] The Temecula monitoring site is operated by the South Coast Air Quality Management District (SCAQMD). The Pechanga Tribe also operates an ozone monitoring site at the reservation and submits the data that it collects to AQS. However, the 2015–2017 design value from the Pechanga monitoring site is invalid because it does not meet the completeness requirements for the 2008 ozone standard.[13] Therefore, our proposed determination that the Pechanga nonattainment area failed to attain is based on data from the Temecula monitoring site rather than data collected at the Pechanga monitoring site.

The EPA's ''Policy for Establishing Separate Air Quality Designations for Areas in Indian Country'' (''Tribal Designation Policy'') anticipates the use of data from proximate state regulatory monitors to characterize air quality on tribal lands when air monitoring data are unavailable on the reservation.[14] In a previous rulemaking, the EPA relied on 8-hour ozone data from the Temecula monitor to redesignate the Pechanga nonattainment area to attainment for the 1997 ozone NAAQS based on our conclusion that the data from the Temecula monitor were representative of ozone concentrations in the Pechanga nonattainment area.[15] This conclusion was based on the following considerations: ozone pollution is regional in nature; the Temecula monitor is located just 10 miles from the Pechanga area; there are no significant topographic barriers between the monitor and the reservation; and available data from the Temecula and Pechanga monitors tracked very closely over the 2012 to 2014 period.[16]

The ozone data collected at SCAQMD's Temecula monitoring site is complete and, as discussed above, representative of ozone concentrations at the reservation. The 2017 design value calculated from 2015–2017 data from the Temecula monitor is 0.080 ppm, which exceeds the 2008 ozone standard level of 0.075 ppm.[17]

C. Reclassification to Serious

If we finalize the finding of failure to attain as proposed, the effect of this finding would be to reclassify the Pechanga nonattainment area by operation of law to Serious, the next higher classification, as provided under CAA section 181(b)(2)(A)(i). If reclassified, the Pechanga area would be required to attain the standard ''as expeditiously as practicable'' but no later than 9 years after the initial designation as nonattainment, which in this case would be no later than July 20, 2021. After reclassification to Serious, if the area attains the 2008 ozone NAAQS prior to the Serious-area attainment date, the area may seek a clean data determination or a redesignation to attainment.

As noted above, control and permitting requirements for nonattainment areas are determined, in part, by their classification, and a reclassification from Moderate to Serious imposes additional control requirements. Under the CAA and the Tribal Authority Rule (TAR),[18] tribes may, but are not required to, submit implementation plans to the EPA for approval. Under the TAR, the EPA has authority to implement such plan provisions as are necessary or appropriate to protect air quality where tribes do not do so. Accordingly, the EPA implements the tribal major source nonattainment new source review

[10] The Pechanga Tribe has since acquired additional lands that they have placed in trust; however, the nonattainment area boundaries established in 2012 for these standards are unchanged and do not include these new properties.

[11] 77 FR 30088, at 30109 (May 21, 2012).

[12] In accordance with 40 CFR 58, data-collecting agencies must certify annually that ambient concentration data and quality assurance data are completely submitted to AQS, and that the data are accurate to the best knowledge of the certifier, taking into consideration quality assurance findings. For certification for Temecula monitor data for calendar years 2015–2017, see 1) April 29, 2016 letter from Laki Tisopulos, South Coast Air Quality Management District Assistant Deputy Executive Officer to Deborah Jordan, EPA Region IX Air Division Director; 2) April 28, 2017 letter from Jason C. Low, South Coast Air Quality Management District Assistant Deputy Executive Officer, to Alexis Strauss, EPA Region IX Acting Regional Administrator; and 3) April 27, 2018 letter from Jason C. Low, South Coast Air Quality Management District Assistant Deputy Executive Officer, to Alexis Strauss, EPA Region IX Acting Regional Administrator.

[13] AQS 2017 Design Value Report for Pechanga (AQS ID 06–065–0009), December 17, 2018. The 2015–2017 DV for the Pechanga monitoring site failed to meet the 75% annual completeness requirement in 2015 (67%) and the 90% 3-year completeness requirement for 2015–2017 (85%) and, therefore, is invalid. 40 CFR part 50, Appendix P, section 2.3(b).

[14] ''Policy for Establishing Separate Air Quality Designations for Areas of Indian Country,'' a memorandum from Stephen D. Page, Director, EPA Office of Air Quality Planning and Standards, to EPA Regional Air Directors, Regions I–X, dated December 20, 2011. A copy of the Tribal Designation Policy is at *https://www.epa.gov/ozonedesignations/guidance.htm.* See page 6 of the Tribal Designation Policy.

[15] 80 FR 18120 (April 3, 2015).

[16] 80 FR 18120, at 18121–18122 (April 3, 2015) (Response to SCAQMD Comment #1).

[17] AQS 2017 Design Value Report for Temecula (AQS ID 06–065–0016), report date December 12, 2018.

[18] CAA section 301(d) and 40 CFR part 49.

(NSR)[19] and the title V operating permit[20] programs in areas without delegated programs. If this proposed reclassification is finalized, the Pechanga nonattainment area will be subject to the Serious area provisions of the tribal major source nonattainment NSR regulations and title V regulations cited above, but it will not be required to submit an implementation plan to address any part D or title V requirements. The Pechanga area is currently subject to Moderate area major source thresholds of 100 tons per year (tpy) for ozone precursors. If this proposal is finalized, the Pechanga area major source thresholds will be lowered to 50 tpy for ozone precursors. The NSR control requirements for minor sources under the tribal minor NSR regulations will remain the same.[21]

III. Proposed Action and Request for Public Comment

The EPA is proposing to determine that the Pechanga nonattainment area failed to attain the 2008 ozone NAAQS by its applicable Moderate area attainment date of July 20, 2018, based on complete, quality-assured and certified data from the Temecula monitoring site for years 2015–2017. The effect of this determination, if finalized, will be to reclassify the Pechanga nonattainment area from Moderate to Serious for the 2008 ozone NAAQS. The EPA is soliciting comments on our proposed action and rationale over the next 30 days.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This proposed action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This proposed action is not expected to be an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

This proposed rule does not impose an information collection burden under the provisions of the PRA. As noted above, under the CAA and TAR, tribes may, but are not required to, submit implementation plans to the EPA for approval to address the more stringent requirements that apply to Serious ozone nonattainment areas relative to Moderate ozone nonattainment areas.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This proposed action will not impose any requirements on small entities. The proposed determination of failure to attain the 2008 ozone NAAQS (and resulting reclassification) does not in and of itself create any new requirements beyond what is mandated by the CAA. Instead, this proposed rulemaking only makes factual determinations, and does not directly regulate any entities.

E. Unfunded Mandates Reform Act (UMRA)

This proposed action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This proposed action imposes no enforceable duty on any state, local or tribal governments or the private sector.

F. Executive Order 13132: Federalism

This proposed action does not have federalism implications. It will not have substantial direct effects on the states, tribes, or the relationship between the national government and the states and tribes, or on the distribution of power and responsibilities among the various levels of government.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This proposed action has tribal implications. However, it will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. EPA staff have discussed this proposed rule with environmental staff of the Pechanga Tribe. Additionally, an opportunity for formal government-to-government consultation is being extended to Pechanga tribal officials in conjunction with this rulemaking. This outreach and consultation is being conducted according to the ''EPA Policy on Consultation and Coordination with Indian Tribes.''[22]

H. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This proposed action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

I. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This proposed action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer Advancement Act (NTTAA)

This proposed rulemaking does not involve technical standards.

K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this proposed action will not have disproportionately high or adverse human health or environmental effects on minority, low income, or indigenous populations. The purpose of this rule is to make the determination whether a certain area attained the 2008 ozone NAAQS by the attainment date, which is required by the CAA for purposes of implementing the 2008 ozone NAAQS. As such, this action does not directly affect the level of protection provided for human health or the environment.

List of Subjects in 40 CFR Part 81

Environmental protection, Administrative practice and procedure, Air pollution control, Designations and classifications, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, and Volatile organic compounds.

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

Dated: February 1, 2019.

Deborah Jordan,

Acting Regional Administrator, Region IX.

[FR Doc. 2019–02349 Filed 2–13–19; 8:45 am]

BILLING CODE 6560–50–P

[19] 40 CFR 49.166 through 49.173.

[20] 40 CFR part 71.

[21] 40 CFR 49.151 through 49.164.

[22] The document ''EPA Policy on Consultation and Coordination with Indian Tribes'' is available at *https://www.epa.gov/tribal/forms/consultation-and-coordination-tribes.*

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1986–0005; FRL–9989–47—Region 9]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Partial Deletion of the Beckman Instruments Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of intent.

SUMMARY: The Environmental Protection Agency (EPA) Region 9 is issuing a Notice of Intent to Delete the soil portion of the Beckman Instruments Superfund Site (Site) located in Porterville, California, from the National Priorities List (NPL) and requests public comments on this proposed action. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). EPA and the State of California, through the Department of Toxic Substances Control (DTSC), have determined that all appropriate soil response actions under CERCLA have been completed. However, this deletion does not preclude future actions under Superfund.

This partial deletion pertains to the soil; a map indicating the area to be deleted is in the public docket. The groundwater will remain on the NPL and is not being considered for deletion as part of this action. Maintenance, monitoring, and five-year reviews of the groundwater remedy will continue until all drinking water standards have been met.

DATES: Comments must be received by March 18, 2019.

ADDRESSES: Submit your comments, identified by Docket ID no. EPA–HQ–SFUND–1986–0005, by one of the following methods:

- *https://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 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 *https://www2.epa.gov/dockets/commenting-epa-dockets*.
- *Email:* Project Manager: *Hadlock.holly@epa.gov* or Community Involvement Coordinator: *Lane.jackie@epa.gov*.
- *Mail:* Holly Hadlock (SFD–7–3), U.S. EPA, 75 Hawthorne Street, San Francisco, CA 94105.
- *Hand delivery:* Superfund Records Center, U.S. EPA, 75 Hawthorne Street, San Francisco, California. Such deliveries are accepted only during EPA's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID no. EPA–HQ–SFUND–1986–0005. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *https://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *https://www.regulations.gov* or email. The *https://www.regulations.gov* website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *https://www.regulations.gov,* your email address will automatically be captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *https://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in the hard copy. Publicly available docket materials are available either electronically in *https://www.regulations.gov* or in hard copy at the following repositories:

Superfund Records Center, 75 Hawthorne Street, Room 3110, San Francisco, California, Hours: 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding federal holidays; (415) 947–8717.

Site Repository: 41 W Thurman Avenue, Porterville, California. Call (559) 784–0177 for hours of operation.

FOR FURTHER INFORMATION CONTACT: Holly Hadlock, Remedial Project Manager, U.S. EPA, Region 9 (SFD–7–3), 75 Hawthorne Street, San Francisco, CA 94105, (415) 972–3171, email: *hadlock.holly@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. Introduction

EPA Region 9 announces its intent to delete the soil portion of the Beckman Instruments Superfund Site from the NPL and requests public comment on this proposed action. The NPL constitutes Appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. EPA maintains the NPL in order to identify sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL are eligible for remedial actions financed by the Hazardous Substance Superfund (Fund). This partial deletion of the Beckman Instruments Site is proposed in accordance with 40 CFR 300.425(e) and is consistent with the Notice of Policy Change: Partial Deletion of Sites Listed on the National Priorities List. 60 FR 55466 (Nov. 1, 1995). As described in section 300.425(e)(3) of the NCP, a portion of a site deleted from the NPL remains

eligible for Fund-financed remedial action if future conditions warrant such actions.

EPA will accept comments on the proposal to partially delete the Site for thirty (30) days after publication of this document in the **Federal Register**.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the soil of the Beckman Instruments Superfund Site and demonstrates how it meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making such a determination pursuant to 40 CFR 300.425(e), EPA will consider, in consultation with the State, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Pursuant to CERCLA section 121(c) and the NCP, EPA conducts five-year reviews to ensure the continued protectiveness of remedial actions where hazardous substances, pollutants, or contaminants remain at a site above levels that allow for unlimited use and unrestricted exposure. EPA conducts such five-year reviews even if a site is deleted from the NPL. At the Beckman Instruments Site, contaminants in soil have been cleaned up to levels that allow for unlimited use and unrestricted exposure, and therefore no five-year reviews for the portion of the Site proposed to be deleted are necessary. EPA may initiate further action to ensure continued protectiveness at a deleted site if new information becomes available that indicates it is appropriate. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

III. Deletion Procedures

The following procedures apply to deletion of the soil portion of the Site:

(1) EPA consulted with the State before developing this Notice of Intent for Partial Deletion.

(2) EPA has provided the State 30 working days for review of this notice prior to publication of it today.

(3) In accordance with the criteria discussed above, EPA has determined that no further response is appropriate.

(4) The State of California, through DTSC, has concurred with the deletion of the soil portion of the Beckman Instruments Superfund Site from the NPL.

(5) Concurrently, with the publication of this Notice of Intent for Partial Deletion in the **Federal Register**, a notice is being published in a major local newspaper, the Porterville Recorder. The notice announces the 30-day public comment period concerning the Notice of Intent for Partial Deletion of the Site from the NPL.

(6) EPA placed copies of documents supporting the proposed partial deletion in the deletion docket and made these items available for public inspection and copying at the Site information repositories identified above.

If comments are received within the 30-day comment period on this document, EPA will evaluate and respond accordingly to the comments before making a final decision to delete the soil portion of the site. If necessary, EPA will prepare a Responsiveness Summary to address any significant public comments received. After the public comment period, if EPA determines it is still appropriate to delete the soil portion of the Beckman Instruments Superfund Site, the Regional Administrator will publish a final Notice of Partial Deletion in the **Federal Register**. Public notices, public submissions and copies of the Responsiveness Summary, if prepared, will be made available to interested parties and included in the site information repositories listed above.

Deletion of a portion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a portion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

IV. Basis for Partial Site Deletion

The following information provides EPA's rationale for deleting the soil portion of the Beckman Instruments Superfund Site from the NPL.

Site Background and History

The Site (CERCLIS ID # CAD048645444), which includes the Beckman industrial plant and the surrounding study area, is located near the southern limit of the City of Porterville, California. Porterville is in Tulare County on the eastern edge of California's San Joaquin Valley. Site contamination originated at the plant, physically located at 167 West Poplar Avenue in Porterville. The plant occupies approximately 12 acres, while the overall Site is approximately 160 acres in size and extends to the Tule River to the north, plant property limits to the east, Poplar Ditch to the south, and Newcomb Street to the west. Beckman Instruments, now operating as Beckman Coulter, Inc. (BCI), started manufacturing electronic equipment assemblies and printed circuit boards in Porterville in 1967. Industrial processes used at the plant included electroplating and degreasing. Past processes and materials handling at the Beckman plant were responsible for lead contamination in soils at the Beckman plant. From 1975 until early 1983, waste discharged to an on-site evaporation pond resulted in groundwater becoming contaminated with volatile organic compounds (VOCs), primarily 1,1-dichloroethene. This contaminated groundwater migrated beyond the boundaries of the plant property. On October 15, 1984, the Site was proposed for NPL listing (49 FR 40320). On June 10, 1986, EPA added the Site to the NPL (51 FR 21054). There is one site-wide Operable Unit which includes both groundwater and soil. The soil is being addressed in this proposed action. A map of the proposed deletion area is in the docket.

Ongoing Development

The plant property is zoned for industrial and agricultural use. Land use in the surrounding area is residential, commercial, and agricultural. Since the 1990s, plant activities have scaled back. The Beckman plant is now owned and operated by Nypro, a Jabil Company.

1989 Investigation and Remedy for Soils

EPA completed a remedial investigation and feasibility study in 1989 and concluded that the only contaminant of concern in soil was lead in the operational area. EPA evaluated three soil remedial action alternatives in the Record of Decision (ROD): No action (S–1); excavation and disposal (S–3); and extraction, treatment, and disposal (S–4). Alternative S–1 was deemed not protective of human health and the

environment and Alternative S–4 was deemed not cost-effective. EPA selected Alternative S–3, excavation and off-site disposal at an approved facility, for the soil remedy in the September 26, 1989, ROD. A cleanup level of 200 milligram per kilogram (mg/kg) lead was selected based on human health risk modeling. The remedial action objective was to prevent direct contact with, and inhalation of, lead-contaminated soil. EPA determined that this remedial action would allow for unrestricted access and use of the plant property. EPA also selected a cleanup remedy for groundwater; the remedy for VOCs in groundwater was extraction, treatment, and discharge of cleaned water. EPA issued a ROD Amendment in 2005 changing the groundwater remedy to monitored natural attenuation.

Soil Response Actions and Cleanup Levels

In March 1990 Beckman conducted the soil remedial action, excavating approximately 18 cubic feet of lead-contaminated soil, which was transported to Kettleman Hills Landfill, a CERCLA-approved facility in Kettleman City, California.

In 2013, EPA issued the Fourth Five-Year Review Report which assessed the protectiveness of the remedy. In this report EPA noted that in 2009 the California residential lead screening level (SL) was revised to 80 mg/kg, based on 1 μg/deciliter benchmark for source-specific incremental change in blood lead levels for children. EPA determined that the 1990 soil cleanup was protective for commercial/industrial use of the property but not residential use. Based on the finding in the Fourth Five-Year Review Report, EPA asked BCI to re-evaluate the post-excavation lead concentrations and determine if the new residential lead screening level of 80 mg/kg had been attained during the 1990 soil excavation.

From 2015 to 2017, BCI, with EPA oversight, conducted several investigations and excavations. Soil samples were collected from the 1990 excavation area and several samples had lead above 80 mg/kg. In 2017 BCI did a more thorough investigation and by October 2017 had excavated approximately 270 additional cubic yards of soil, which were transported to Kettleman Hills Landfill. Confirmation sampling and analysis indicated that 50 samples were below the California residential screening level of 80 mg/kg and four samples were just above this concentration. The average concentration of the remaining soil is well below 80 mg/kg; a statistical analysis for the remaining soil calculated a conservative estimate of a mean concentration of 24 mg/kg. EPA determined that the Site soil had been cleaned to a level that allows for unlimited use and unrestricted exposure.

Monitoring and Institutional Controls

Because the soil is now clean enough to allow for any future use, no maintenance and monitoring of the soils remedy is required and no institutional controls are needed to restrict future property use.

2018 Five-Year Review

EPA conducts reviews every five years to determine if remedies are functioning as intended and if they continue to be protective of human health and the environment. EPA issued the Fifth Five-Year Review Report on August 23, 2018, and concluded that the soil remediation is complete and the remedy at the Beckman Instruments Site is protective of human health and the environment. There were no issues or recommendations. The next five-year review, scheduled for 2023, will evaluate the groundwater remedy only.

Community Involvement

EPA prepared a Community Involvement Plan in 1987 and updated it in 1994.

EPA held numerous community meetings before and during the Site cleanup and issued fact sheets, most of which focused on groundwater. EPA released two Proposed Plans, one for the ROD and one for the ROD Amendment. EPA released a fact sheet shortly before publication of this Notice informing the community of the proposal to delete the soil portion of the Site from the NPL and how to submit comments.

Determination That the Criteria for Deletion Have Been Met

EPA has followed all procedures required by 40 CFR 300.425(e), Deletion from the NPL. EPA consulted with the State of California prior to developing this Notice. EPA determined that the responsible party has implemented all appropriate response actions required and that no further response action for the soil portion of the Site is appropriate. EPA is publishing a notice in a major local newspaper, The Porterville Recorder, of its intent to partially delete the Site and how to submit comments. EPA placed copies of documents supporting the proposed partial deletion in the Site information repositories; these documents are available for public inspection and copying.

The implemented soil remedy achieved the degree of cleanup and protection specified in the ROD for the soil portion of the Site. The selected remedial action objectives and associated cleanup levels for the soil are consistent with agency policy and guidance. Based on information currently available to EPA, no further Superfund response in the area proposed for deletion is needed to protect human health and the environment.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(d); 42 U.S.C. 9601–9657; E.O. 13626, 77 FR 56749, 3 CFR, 2013 Comp., p.306; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: January 22, 2019.

Michael B. Stoker,

Regional Administrator, Region 9.

[FR Doc. 2019–02348 Filed 2–13–19; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WC Docket Nos. 19–2 and 13–184; FCC 19–5]

E-Rate Program Amortization Requirement, Modernizing the E-Rate Program for Schools and Libraries

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) proposes to eliminate the E-Rate amortization requirement, which requires E-Rate applicants to amortize over three years upfront, non-recurring category one charges of $500,000 or more. Through this measure, the Commission seeks to further the Commission's goal of closing the digital divide by facilitating and promoting increased broadband infrastructure deployment to our nation's schools and libraries.

DATES: Comments are due on or before March 18, 2019 and reply comments are due on or before April 1, 2019. If you anticipate that you will be submitting comments, but find it difficult to do so

within the period of time allowed by this document, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit comments, identified by WC Docket Nos. 19–2 and 13–184, 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: 888–835–5322.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Bryan P. Boyle, Wireline Competition Bureau, (202) 418–7924 or TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM) in WC Docket Nos. 19–2 and 13–184; FCC 19–5, adopted on January 29, 2019 and released on January 31, 2019. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street SW, Washington, DC 20554 or at the following internet address: *https://docs.fcc.gov/public/attachments/FCC-19-5A1.pdf.*

I. Introduction

1. Schools and libraries rely on the Commission's E-Rate program to ensure that they can receive affordable, high-speed broadband so they can connect today's students with next-generation learning opportunities. A Commission decision in 2000 limited E-Rate's use for this purpose by requiring schools and libraries to amortize over three years upfront, non-recurring category one charges of $500,000 or more, which includes charges for special construction projects. This amortization requirement increased costs for E-Rate supported builds and created uncertainty for applicants about the availability of E-Rate funding for the second and third years of the amortization cycle. In 2014, the Commission suspended the requirement through funding year 2018 in order to lower these barriers to broadband infrastructure investment. Our experience over the past few years suggests that allowing the amortization requirement to be restored would decrease broadband investment while increasing administrative burdens, and that eliminating the requirement would not create a drain on E-Rate funding. Therefore, the Commission now proposes to eliminate the amortization requirement. Through these measures, the Commission seeks to further its goals of closing the digital divide by facilitating and promoting increased broadband infrastructure deployment to our nation's schools and libraries.

II. Notice of Proposed Rulemaking

2. To promote the buildout and deployment of high-speed networks and connections on a permanent basis to unserved and underserved schools and libraries, including those in rural areas, the Commission proposes to eliminate the amortization requirement for non-recurring category one funding requests over $500,000, including for special construction, from the E-Rate program. As discussed below, our experience indicates that the suspension of the amortization requirement has encouraged the deployment of high-speed, low-cost broadband networks by eliminating administrative barriers and making E-Rate funding more predictable.

3. Based on the information before us, it appears that suspending the amortization requirement has: (1) Decreased administrative burdens associated with applying for E-Rate support; (2) allowed applicants and service providers to receive disbursements for the full E-Rate supported portion of projects sooner; and (3) reduced uncertainty regarding the availability of funding. Under the suspension, rather than filing funding requests in each year of the amortization cycle, applicants have had to file only a single funding request to receive E-Rate support for a project, thereby reducing the administrative effort and costs associated with filing funding requests. Moreover, during the suspension, service providers have recouped their buildout costs in one funding year rather than over the three-year amortization cycle, which, in turn, has likely made special construction a more attractive option for service providers. Additionally, applicants have enjoyed more certainty about funding for their special construction projects, receiving commitments for projects upfront, rather than in a piecemeal fashion over three years. As a result, the suspension of the amortization requirement has provided applicants and service providers with increased certainty and predictability that E-Rate funding will be available for large, special construction funding requests, which has likely incentivized efficient investment in infrastructure, including the deployment of fiber.

4. The Commission invites comment on, and evidence regarding, whether the amortization suspension has encouraged the deployment of high-speed, low-cost connections. The Commission also seeks comment on the effect of the amortization suspension on applicants and on USF expenditures. Has permitting service providers to recoup costs up front allowed applicants and the USF to pay less over time because service providers have not otherwise recouped capital costs over time through higher recurring charges? Would permanently eliminating the amortization requirement allow applicants and the USF to pay less over time for the same reason?

5. If the amortization requirement were to be restored, the Commission expects that the increased administrative burden, delayed funding commitments for special construction projects due to the three-year amortization cycle, and uncertainty around receiving funding commitments in the second and third years of the cycle would deter applicants from seeking funding for special construction. The Commission seeks comment on this view. The Commission also seeks comment on the effect of restoring the amortization requirement on applicants and on USF expenditures. Would applicants, particularly those in underserved and rural areas, be discouraged from requesting funding for special construction if the amortization requirement were to be restored? Would these applicants simply not request funding for any services at all? Would they be forced to seek funding for more costly service options, such as funding for services provided over more expensive legacy networks, thereby resulting in an increase in USF expenditures? Or would they still seek special construction funding for new networks, but with all buildout costs rolled into monthly recurring charges? What effect would this have on USF expenditures in the long term? Specifically, would rolling buildout charges into higher monthly recurring charges ultimately cause applicants and the USF to pay more over time? Does paying buildout charges upfront increase USF expenditures in the short term but decrease USF expenditures in the long term because it reduces monthly recurring charges? The Commission also seeks comment on whether an amortization requirement would conflict with the economic realities of special construction projects.

Would requiring service providers to wait several years to recover their investments for high sunk cost, low marginal cost undertakings such as special construction make them less likely to build out to unserved areas? If applicants were forced to amortize certain special construction projects, would service providers have to seek financing for part of the project, and would that increase the overall cost of the project?

6. Further, over the four funding years of the suspension, it appears the concern that one-time charges would create a drain on the Fund has not materialized. To the contrary, funding requests from funding years 2015 through 2017 that would have been amortized if the requirement had been in place represented less than 5% of all E-Rate funding commitments during that period. Going forward, the Commission does not expect that allowing all funding associated with a special construction project to be paid out in one funding year, rather than over the course of three funding years, would divert funding from other services, as demand for E-Rate funding was typically under the cap from funding years 2015 through 2018, and there is no indication that there will be a significant increase in demand for future funding years.

7. Are commenters nevertheless concerned that large special construction funding requests could deplete all E-Rate funds available under the cap and leave insufficient funding available for category two services? If so, the Commission seeks data to support commenters' concerns. And to the extent that commenters believe that large special construction funding requests could create a drain on E-Rate funding, how would requiring amortization of such requests alleviate this concern? In particular, even if demand were to approach the E-Rate funding cap, the Commission does not believe that requiring amortization for large, upfront category one funding requests would necessarily alleviate this problem because requiring amortization would not reduce the amount of funding requested—it would simply spread out the amount of funding provided over a minimum of three years. While this approach could mitigate the impact of a one-year surge in demand for special construction, it would not mitigate problems that a consistent increase in demand would create. Are there better ways to mitigate any drain on E-Rate funding caused by large, upfront requests for category one funding other than requiring amortization?

8. To the extent that commenters disagree with our proposal to permanently eliminate the amortization requirement, they should explain why and provide supporting data. What are the benefits, if any, of reinstating the amortization requirement for funding year 2020 and beyond, and how do those benefits outweigh the costs of the amortization requirement? Are there problems that resulted from the amortization suspension that the Commission has not identified?

III. Procedural Matters

9. *Paperwork Reduction Act.* The NPRM may result in revised information collection requirements. If the Commission adopts any revised information collection requirement, the Commission will publish a notice in the **Federal Register** inviting the public to comment on the requirement, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501–3520). In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

10. *Initial Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Notice of Proposed Rulemaking (NPRM). Written comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

11. The Commission is required by Section 254 of the Communications Act of 1934, as amended, to promulgate rules to implement the universal service provisions of Section 254. On May 8, 1997, the Commission adopted rules to reform its system of universal service support mechanisms so that universal service is preserved and advanced as markets move toward competition. Specifically, under the schools and libraries universal service support mechanism, also known as the E-Rate program, eligible schools, libraries, and consortia that include eligible schools and libraries may receive discounts for eligible telecommunications services, internet access, and internal connections.

12. The rule the Commission proposes in this NPRM is directed at streamlining the administration of the E-Rate program for applicants, service providers, and the Universal Service Administrative Company. The rule that the Commission proposes would eliminate burdens associated with requesting funding for special construction.

13. The legal basis for the NPRM is contained in sections 1 through 4, 201–205, 254, 303(r), and 403 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. 151 through 154, 201 through 205, 254, 303(r), and 403.

14. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

15. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* The Commission's actions, over time, may affect small entities that are not easily categorized at present. The Commission therefore describes here, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA's Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States which translates to 28.8 million businesses.

16. Next, the type of small entity described as a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of August 2016, there were approximately 356,494 small organizations based on registration and

tax data filed by nonprofits with the Internal Revenue Service (IRS).

17. Finally, the small entity described as a ''small governmental jurisdiction'' is defined generally as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' U.S. Census Bureau data from the 2012 Census of Governments indicate that there were 90,056 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number there were 37,132 General purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,184 Special purpose governments (independent school districts and special districts) with populations of less than 50,000. The 2012 U.S. Census Bureau data for most types of governments in the local government category show that the majority of these governments have populations of less than 50,000. Based on this data the Commission estimates that at least 49,316 local government jurisdictions fall in the category of ''small governmental jurisdictions.''

18. The proposal under consideration in the NPRM may, if adopted, result in recordkeeping requirements for both large and small entities, but they should be equal to or less than existing requirements.

19. *Eliminating Amortization Requirement.* The Commission proposes to permanently eliminate the amortization requirement from the E-Rate program to provide applicants and service providers with increased certainty that E-Rate funding will be available for large, special construction funding requests, thereby likely incentivizing efficient investment in infrastructure, including deployment of fiber. The Commission seeks comment on whether eliminating the amortization requirement would increase administrative burdens for small entities.

20. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): ''(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.''

21. In this NPRM, the Commission seeks comment on a reform to the E-Rate program. The Commission seeks to streamline the program rules and administration for applicants and service providers planning their E-Rate participation in future funding years. The Commission recognizes that its proposed rule would impact small entities. The rule the Commission proposes would lessen reporting burdens on small entities.

22. *Eliminating amortization requirement.* By eliminating the amortization requirement, applicants may file a single application for a special construction project, rather than multiple applications over multiple years for the same special construction project.

23. *Compliance burdens.* Implementing our proposed rule would impose some burden on small entities by requiring them to become familiar with the new rule to comply with it.

24. *Ex Parte Rules.* This proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the 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 this proceeding should familiarize themselves with the Commission's *ex parte* rules.

25. Pursuant to §§ 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 in the **DATES** section of this document. Comments and reply 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.

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).

IV. Ordering Clauses

26. Accordingly, *it is ordered* that, pursuant to the authority found in sections 1 through 4, 201–205, 254, 303(r) and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151 through 154, 201 through 205, 254, 303(r), and 403, and § 1.3 of the Commission's rules, 47 CFR 1.3, this Notice of Proposed Rulemaking *is adopted*.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2019–02292 Filed 2–13–19; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[DA 19–25]

Electronic Delivery of MVPD Communications; Modernization of Media Regulation Initiative

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Media Bureau of the Federal Communications Commission (FCC or Commission) extends the deadlines for comment on an industry proposal to revise the carriage election notice process.

DATES: Submit comments on or before March 18, 2019; reply comments on or before March 26, 2019.

ADDRESSES: You may submit comments, identified by MB Docket Nos. 17–105 and 17–317, 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: 888–835–5322.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Varsha Mangal, of the Media Bureau, Video Division, (202) 418–0073 or *varsha.mangal@fcc.gov,* or Lyle Elder of the Media Bureau, Policy Division, (202) 418–2365 or *lyle.elder@fcc.gov.* Direct press inquiries to Janice Wise (202) 418–8165; *janice.wise@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's DA 19–25, adopted and released on January 29, 2019. The full text of this document is available electronically via the FCC's Electronic Document Management System (EDOCS) website at *http://fjallfoss.fcc.gov/edocs_public/* or via the FCC's Electronic Comment Filing System (ECFS) website at *http://fjallfoss.fcc.gov/ecfs2/.* (Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.) This document is also available for public inspection and copying 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. The complete text may be purchased from the Commission's copy contractor, 445 12th Street SW, Room CY–B402, Washington, DC 20554. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to *fcc504@fcc.gov* or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

On December 13, 2018, the Media Bureau released a PN (*December PN*) seeking comment on the proposal that was submitted by the National Association of Broadcasters (NAB) and NCTA—The internet and Television Association (NCTA) on December 7, 2018 in docket number 17–317 (*Joint Proposal,* available online at *https://ecfsapi.fcc.gov/file/1207161565486/Ex%20Parte%20Carriage%20Elections%20Notice%20%20NCTA-NAB%2012-7-18.pdf*).[1] The *Joint Proposal* responds to the *Electronic Delivery of MVPD Subscriber Notification Rules* Notice of Proposed Rulemaking (*NPRM*) that sought comment, in part, on updating the requirement that broadcast televisions stations send carriage election notices via certified mail. In response to the *NPRM,* several parties proposed ways to reduce the burden and costs involved in the carriage election process.

Currently, sections 76.64(h) and 76.66(d) of our rules direct each television broadcast station to provide notice every three years, via certified mail, to each cable system or Direct Broadcast Satellite carrier serving its market regarding whether it is electing to demand carriage (''must carry'' or ''mandatory carriage''), or to withhold carriage pending negotiation (''retransmission consent''). The *NPRM* sought comment on revising this requirement to permit broadcast stations to use alternative means of notice.

Under the *Joint Proposal,*

> a commercial broadcast TV station would be required to send notice of its must carry or retransmission consent election to a cable operator only if the station changed its election status from its previous election. In those cases, the broadcaster would send its notice to an email address listed in the cable operator's online public file or in the FCC's Cable Operations and Licensing System (COALS) database, for cable operators that do not have an online public file.

NAB and NCTA claim that this approach ''would alleviate the burdens associated with the current notification process and meet the needs of both broadcasters and cable operators.''

The comment and reply deadlines established by the *December PN,* as well as the planned publication of that PN, fell during a lapse in funding. By operation of the General Counsel's January 28, 2019 Public Notice, the deadlines for both would have been extended to the same day—January 30, 2019.[2] In light of these unique circumstances, the Media Bureau, on its own motion, further extends the deadlines. We will publish this PN in the **Federal Register** and announce the final comment dates once they are established.

We invite the public to comment on the recommended approach in the *Joint Proposal.* In particular, we seek comment on whether, and to what extent, the Commission should adopt these recommendations or any alternative modifications to the carriage election rules. The Commission will consider the *Joint Proposal* and the comments filed in response to this PN together with the comments and ex partes previously filed in response to the *NPRM* in determining what action to take in this proceeding.

Ex Parte Rules.—Permit-But-Disclose. The proceeding shall be treated as a

[1] *Media Bureau Seeks Comment on Industry Proposal for Carriage Election Notice Modernization,* MB Docket No. 17–317, PN, DA 18–1250 (MB December 13, 2018).

[2] *Suspension of Filing Deadlines,* Public Notice, DA 19–20 (OGC January 28, 2019).

''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules, found at 47 CFR 1.1200 *et seq.* 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 this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Filing Requirements.—Comments and Replies. 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://fjallfoss.fcc.gov/ecfs2/.*
- *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.

Availability of Documents. Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW, CY–A257, Washington, DC 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

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 FCC's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Federal Communications Commission.

Thomas Horan,

Chief of Staff, Media Bureau.

[FR Doc. 2019–02314 Filed 2–13–19; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 84, No. 31

Thursday, February 14, 2019

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Natural Resources Conservation Service

Risk Management Agency

2018 Farm Bill Implementation Listening Session

AGENCY: Farm Service Agency, Natural Resources Conservation Service, and Risk Management Agency, USDA.

ACTION: Notice.

SUMMARY: In preparing to implement the Agriculture Improvement Act of 2018 (commonly referred to as the 2018 Farm Bill), we are hosting a listening session for initial public input about new programs and changes to existing programs implemented by the Farm Service Agency (FSA), the Natural Resources Conservation Service (NRCS), and the Risk Management Agency (RMA). The 2018 Farm Bill is intended to provide support, certainty, and stability to our Nation's farmers, ranchers, and land stewards by enhancing farm support programs, improving crop insurance, maintaining disaster programs, and promoting and supporting voluntary conservation. We invite you to participate in the listening session. The listening session is open to the public.

DATES:

Listening session: The listening session will be on February 26, 2019, and will begin at 9 a.m.

Registration: You must register by February 22, 2019, to attend the listening session and are encouraged to provide written comments prior to the listening session.

Comments: For those orally presenting comments at the listening session, written comments are encouraged by February 22, 2019. Additional written comments will be accepted through March 1, 2019.

ADDRESSES:

Listening session: The meeting will be held in the Jefferson Auditorium of the South Building at 14th Street and Independence Ave. SW, Washington, DC 20250. Entry to the South Building for the listening session is through Wing 5 on Independence Ave.; valid photo identification is required.

Registration: To register, visit *https://www.farmers.gov/farmbill.*

Comments: We invite you to submit comments on this notice. In your comments, include the date, volume, and page number of this issue of the **Federal Register**, and the title of notice. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and search for Docket ID USDA–2019–0001. Follow the online instructions for submitting comments.
- You may submit your written comments at the listening session.

All written comments received will be publicly available on *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Andrew Fisher; phone: (202) 692–5298 or email: *Andrew.Fisher@osec.usda.gov.* Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720–2600 (voice).

SUPPLEMENTARY INFORMATION: The listening session will provide an opportunity for stakeholders to share their thoughts about how USDA can streamline and improve program delivery, as well as enhance customer service. Examples of programs FSA implements include the Agriculture Risk Coverage (ARC) and Price Loss Coverage (PLC) programs, the Dairy Margin Coverage (DMC) Program, the Noninsured Crop Disaster Assistance Program (NAP), the Conservation Reserve Program (CRP), and farm ownership and operating loans. NRCS implements the Environmental Quality Incentives Program (EQIP), the Conservation Stewardship Program (CSP), the Agricultural Conservation Easement Program (ACEP), the Regional Conservation Partnership Program (RCPP), and other conservation provisions. RMA implements crop insurance coverage. We invite you to participate in the listening session. The listening session is open to the public.

On December 20, 2018, the 2018 Farm Bill (Pub. L. 115–334) was signed into law (see *https://www.congress.gov/bill/115th-congress/house-bill/2/text*). The Secretary of Agriculture and the respective USDA agencies, including, but not limited to FSA, NRCS, and RMA, are working to implement the provisions of the 2018 Farm Bill as expeditiously as possible to meet the needs of producers and other stakeholders. To allow for customer input and ensure transparency, it is important to hear from stakeholders regarding their priorities, concerns, and requests.

The purpose of the listening session is for FSA, NRCS, and RMA to hear from the public; this is not a discussion with FSA, NRCS, and RMA officials or a question and answer session. The purpose is to receive public input that each agency can factor into discretionary decisions that need to be made to implement the provisions of the 2018 Farm Bill.

Date	Time	Location information
February 26, 2019	9 a.m	USDA headquarters, in the South Building, Jefferson Auditorium, 14th Street and Independence Ave. SW, Washington, DC 20250.

The listening session will begin with brief opening remarks from USDA. Individual speakers providing oral comments will be limited to 3–5 minutes each; however, if all speakers can be accommodated within the allotted time for the session, individual speaking times may be adjusted at the written request of the stakeholder (use the contact information above). As noted above, we request that speakers providing oral comments also provide a

written copy of their comments by February 22, 2019. All stakeholders and interested members of the public are welcome to register to provide oral and written comments; however, based on the session time or topic area constraints, USDA may not be able to allocate time for all registered attendees to provide oral comments during the session.

The purpose of the listening session is for FSA, NRCS, and RMA to hear from stakeholders and other interested members of the public about the programs that are being implemented or revised by FSA, NRCS, or RMA as required by the 2018 Farm Bill. Please refer to the name of the FSA, NRCS, or RMA program in your comment and the relevant section number in the 2018 Farm Bill. In your comments, provide your input about the program(s), changes, and anything else that may be helpful to USDA. The following list of programs span multiple sections in the 2018 Farm Bill or have program names that may not be obvious from the section title (see listing below for complete section-by-section names):

- Revised ARC and PLC Programs (2018 Farm Bill sections 1101–1107);
- Revised Marketing Assistance Loans and Loan Deficiency Payments and the extension of the Sugar Program and the related Feedstock Flexibility Program (2018 Farm Bill sections 1201–1205; 1301; 9009);
- New DMC and Other Dairy-Related Provisions (2018 Farm Bill section 1401);
- Revised disaster assistance programs (2018 Farm Bill sections 1501; 1601);
- Common provisions for payment limitations and payment eligibility (2018 Farm Bill sections 1703–1704);
- FSA accountability, streamlining, and related provisions (2018 Farm Bill sections 1705–1707);
- Wetland conservation and mitigation banking provisions (2018 Farm Bill sections 2101–2102);
- CRP (2018 Farm Bill sections 2201–2209);
- EQIP (2018 Farm Bill sections 2301–2306);
- Conservation Innovation Grants and Payments (2018 Farm Bill section 2307);
- CSP (2018 Farm Bill section 2308);
- Other conservation provisions, including ACEP and RCPP (2018 Farm Bill sections 2309–2822);
- Farm Loans (2018 Farm Bill sections 5101–5416);
- Biomass Crop Assistance Program (2018 Farm Bill section 9010);
- Crop Insurance (2018 Farm Bill sections 11101–11126);

To identify the section numbers for your comments and to find the relevant text for FSA, NRCS, and RMA programs in the 2018 Farm Bill, the following is an excerpt from the 2018 Farm Bill Table of Contents that focuses on the sections for the FSA, NRCS, and RMA programs:

Title I—Commodities

Subtitle A—Commodity Policy

Sec. 1101. Definition of effective reference price.
Sec. 1102. Base acres.
Sec. 1103. Payment yields.
Sec. 1104. Payment acres.
Sec. 1105. Producer election.
Sec. 1106. Price loss coverage.
Sec. 1107. Agriculture risk coverage.

Subtitle B—Marketing Loans

Sec. 1201. Extensions.
Sec. 1202. Loan rates for nonrecourse marketing assistance loans.
Sec. 1204. Special competitive provisions for extra long staple cotton.
Sec. 1205. Availability of recourse loans.

Subtitle C—Sugar

Sec. 1301. Sugar policy.

Subtitle D—Dairy Margin Coverage and Other Dairy Related Provisions

Sec. 1401. Dairy margin coverage.
Sec. 1402. Reauthorizations.

Subtitle E—Supplemental Agricultural Disaster Assistance

Sec. 1501. Supplemental agricultural disaster assistance.

Subtitle F—Noninsured Crop Assistance

Sec. 1601. Noninsured crop assistance program.

Subtitle G—Administration

Sec. 1702. Suspension of permanent price support authority.
Sec. 1703. Payment limitations.
Sec. 1704. Adjusted gross income limitations.
Sec. 1705. Farm Service Agency accountability.
Sec. 1706. Implementation.
Sec. 1707. Exemption from certain reporting requirements for certain producers.

Title II—Conservation

Subtitle A—Wetland Conservation

Sec. 2101. Wetland conversion.
Sec. 2102. Wetland conservation.
Sec. 2103. Mitigation banking.

Subtitle B—Conservation Reserve Program

Sec. 2201. Conservation reserve.
Sec. 2202. Conservation reserve enhancement program.
Sec. 2203. Farmable wetland program.
Sec. 2204. Pilot programs.
Sec. 2205. Duties of owners and operators.
Sec. 2206. Duties of the Secretary.
Sec. 2207. Payments.
Sec. 2208. Contracts.
Sec. 2209. Eligible land; State law requirements.

Subtitle C—Environmental Quality Incentives Program and Conservation Stewardship Program

Sec. 2302. Purposes of environmental quality incentives program.
Sec. 2303. Definitions under environmental quality incentives program.
Sec. 2304. Establishment and administration of environmental quality incentives program.
Sec. 2305. Environmental quality incentives program plan.
Sec. 2306. Limitation on payments under environmental quality incentives program.
Sec. 2307. Conservation innovation grants and payments.
Sec. 2308. Conservation stewardship program.
Sec. 2309. Grassland conservation initiative.

Subtitle D—Other Conservation Programs

Sec. 2401. Watershed protection and flood prevention.
Sec. 2402. Soil and water resources conservation.
Sec. 2403. Emergency conservation program.
Sec. 2404. Conservation of private grazing land.
Sec. 2405. Grassroots source water protection program.
Sec. 2406. Voluntary public access and habitat incentive program.
Sec. 2407. Wildlife management.
Sec. 2408. Feral swine eradication and control pilot program.
Sec. 2409. Report on small wetlands.
Sec. 2410. Sense of Congress relating to increased watershed-based collaboration.

Subtitle E—Funding and Administration

Sec. 2501. Commodity Credit Corporation.
Sec. 2502. Delivery of technical assistance.
Sec. 2503. Administrative requirements for conservation programs.
Sec. 2504. Temporary administration of conservation programs.

Subtitle F—Agricultural Conservation Easement Program

Sec. 2601. Establishment and purposes.
Sec. 2602. Definitions.
Sec. 2603. Agricultural land easements.
Sec. 2604. Wetland reserve easements.
Sec. 2605. Administration.

Subtitle G—Regional Conservation Partnership Program

Sec. 2701. Establishment and purposes.
Sec. 2702. Definitions.
Sec. 2703. Regional conservation partnerships.
Sec. 2704. Assistance to producers.
Sec. 2705. Funding.
Sec. 2706. Administration.
Sec. 2707. Critical conservation areas.

Title V—Credit

Subtitle A—Farm Ownership Loans

Sec. 5101. Modification of the 3-year experience eligibility requirement for farm ownership loans.
Sec. 5102. Conservation loan and loan guarantee program.
Sec. 5103. Limitations on amount of farm ownership loans.

Sec. 5104. Relending program to resolve ownership and succession on farmland.

Subtitle B—Operating Loans

Sec. 5201. Limitations on amount of operating loans.
Sec. 5202. Microloans.
Sec. 5203. Cooperative lending pilot projects.

Subtitle C—Administrative Provisions

Sec. 5301. Beginning farmer and rancher individual development accounts pilot program.
Sec. 5302. Loan authorization levels.
Sec. 5303. Loan fund set-asides.
Sec. 5304. Use of additional funds for direct operating microloans under certain conditions.
Sec. 5305. Equitable relief.
Sec. 5306. Socially disadvantaged farmers and ranchers; qualified beginning farmers and ranchers.
Sec. 5307. Emergency loan eligibility.

Subtitle D—Miscellaneous

Sec. 5402. State agricultural mediation programs.
Sec. 5403. Compensation of bank directors.
Sec. 5404. Sharing of privileged and confidential information.
Sec. 5406. Removal and prohibition authority; industry-wide prohibition.
Sec. 5407. Jurisdiction over institution-affiliated parties.
Sec. 5408. Definition of institution-affiliated party.
Sec. 5409. Prohibition on use of funds.
Sec. 5410. Expansion of acreage exception to loan amount limitation.
Sec. 5412. Corporation as conservator or receiver; certain other powers.
Sec. 5413. Reporting.
Sec. 5414. Study on loan risk.
Sec. 5415. GAO report on ability of the Farm Credit System to meet the agricultural credit needs of Indian tribes and their members.
Sec. 5416. GAO report on credit service to socially disadvantaged farmers and ranchers.

Title VIII—Forestry

Sec. 8628. Purchase of Natural Resources Conservation Service property, Riverside County, California.

Title IX—Energy

Sec. 9009. Feedstock flexibility.
Sec. 9010. Biomass Crop Assistance Program.

Title XI—Crop Insurance

Sec. 11101. Definitions.
Sec. 11102. Data collection.
Sec. 11103. Sharing of records.
Sec. 11104. Use of resources.
Sec. 11105. Specialty crops.
Sec. 11106. Insurance period.
Sec. 11107. Cover crops.
Sec. 11108. Underserved producers.
Sec. 11109. Treatment of forage and grazing.
Sec. 11110. Administrative basic fee.
Sec. 11111. Enterprise units.
Sec. 11112. Continued authority.
Sec. 11113. Submission of policies and materials to board.
Sec. 11114. Crop production on native sod.
Sec. 11115. Use of national agricultural statistics service data to combat waste, fraud, and abuse.
Sec. 11116. Submission of information to corporation.
Sec. 11117. Continuing education for loss adjusters and agents.
Sec. 11118. Program administration.
Sec. 11119. Agricultural commodity.
Sec. 11120. Maintenance of policies.
Sec. 11121. Reimbursement of research, development, and maintenance costs.
Sec. 11122. Research and development authority.
Sec. 11123. Funding for research and development.
Sec. 11124. Technical amendment to pilot programs.
Sec. 11125. Education and risk management assistance.

Title XII—Miscellaneous

Subtitle A—Livestock

Sec. 12104. Definition of livestock.

Subtitle C—Historically Underserved Producers

Sec. 12303. Tribal Advisory Committee.
Sec. 12304. Beginning farmer and rancher coordination.
Sec. 12306. Availability of Department of Agriculture programs for veteran farmers and ranchers.

Subtitle D—Department of Agriculture Reorganization Act of 1994 Amendments

Sec. 12410. Natural Resources Conservation Service.

Part I—Miscellaneous Agriculture Provisions

Sec. 12612. National agriculture imagery program.
Sec. 12615. Eligibility for operators on heirs property land to obtain a farm number.
Sec. 12618. Data on conservation practices.

Instructions for Attending the Meeting

Space for attendance at the listening session is limited. All persons wishing to attend the listening session must register at *https://www.farmers.gov/farmbill* by February 22, 2019. To register, information will be required, including, but not limited to:

- Attendee contact information;
- Company or organization representation information;
- Farm Bill topic interests; and
- If you would like to speak, written comments.

Upon arrival at the 5th wing of the USDA South Building, registered persons must provide valid photo identification to enter. Please allow extra time to get through security.

All written comments received will be publicly available on *www.regulations.gov*.

If you require special accommodations, such as a sign language interpreter, use the contact information above. The listening session location is accessible to persons with disabilities.

FSA, RMA, and NRCS are interested in all comments, but in particular request input on:

FSA

1. Specific ideas to simplify program implementation and enhance customer service.
2. Producers who apply for FSA, NRCS, and RMA benefits are required to file common eligibility forms including the CCC–902 Farm Operating Plan, the CCC–941 Certification of Average Adjusted Gross Income, and the AD–1026 Certification of compliance with Highly Erodible Lands and Wetland Conservation provisions. How can FSA improve the process for obtaining these forms from program applicants?
3. What changes to NAP requirements would improve and simplify the process for submitting acreage reports and required records for diverse production systems (such as urban, small-scale, and direct-to-consumer production systems)?
4. The 2018 Farm Bill requires better coordination between FSA and NRCS regarding CRP, EQIP, and CSP. How can we better coordinate the programs?
5. The 2018 Farm Bill provides a new CRP pilot, the Soil Health and Income Protection Pilot Program. What can we do to most effectively implement this pilot? Specifically, what does the public recommend for perennial conserving use cover?
6. Would DMC participants have an interest in a premium fee payment option for any current year premiums (2019) to be deducted before indemnity payments are made for 2019?
7. The 2018 Farm Bill raises the level of loan guarantees to 95 percent of the outstanding principal for socially disadvantaged and beginning farmers. Are there other programmatic changes that FSA should consider to enhance the level of participation by socially disadvantaged and beginning farmers in the guaranteed loan programs?

RMA

1. Specific ideas to simplify program implementation and enhance customer service.
2. Specific examples of how cover crop use has affected insurability or a claim determination. If so, what adjustments to the Cover Crop Termination Guidelines should RMA consider?
3. Specific ideas to reduce paperwork and reporting requirements for Whole Farm Revenue Protection while ensuring program integrity.
4. Specific ideas for how crop insurance can meet the needs of

specialty crop growers and those involved in the local food movement.

NRCS

1. Specific ideas to simplify program implementation and enhance customer service.
2. Specific ideas on how NRCS can use its programs to support precision agriculture.
3. Mechanisms to improve the targeting of financial resources to address resource concerns.
4. The 2018 Farm Bill introduced a new incentive contract enrollment option for EQIP that provides for practice installment and annual payments. How should EQIP and CSP be used in conjunction with each other to prevent overlap and improve opportunities for producers to address resource concerns?
5. The 2018 Farm Bill includes EQIP provisions for water conservation or irrigation efficiency practices that are available to States, irrigation districts, groundwater management districts, acequia, land-grant mercedes, or similar entities under a streamlined contracting process to implement water conservation or irrigation practices under a watershed-wide project that will effectively conserve water, provide fish and wildlife habitat, or provide for drought-related environmental mitigation, as determined by the Secretary. What issues or factors should NRCS consider when developing procedures to implement these provisions?
6. Both CSP and EQIP have provisions for organic producers. How should the programs be used to maximize service to producers while avoiding overlap and competition between CSP and EQIP?
7. The 2018 Farm Bill updated the Conservation Innovation Grants provisions to expand the list of eligible partners and focus a portion of the enrollment to on-farm conservation trials pursuing new or innovative conservation approaches. The term ''new or innovative'' is defined as precision agriculture technologies, enhanced nutrient management plans, nutrient recovery systems, and fertilization systems; water management systems; soil health management, including systems addressing soil carbon levels; resource-conserving crop rotations; cover crops; irrigation systems; and any other conservation approach approved by the Secretary as new or innovative. What criteria should NRCS use to prioritize funding proposals defined as ''new or innovative'' approaches?
8. The 2018 Farm Bill introduces new authority under ACEP—Agricultural Land Easements in the ''Buy-Protect-Sell'' provision (see section 2602 of the 2018 Farm Bill). Describe scenarios where you anticipate having a quality conservation easement that is legally effective under the ''Buy-Protect-Sell'' provisions in the 2018 Farm Bill.
9. The 2018 Farm Bill modified the requirements for the non-Federal share provided by eligibility entities under ACEP Agricultural Land Easements. The Managers' report indicates that the program should not be limited to entities that can provide a cash match. Further, the Managers' report indicates that Congress does not intend for NRCS to reject cash matches entirely but broaden options available to eligible entities. How can NRCS ensure both equity for producers and flexibility for entities? (See House Report 115–1072 for the Managers' Report, at the end.)
10. For RCPP:

- What are ways to streamline program administration and increase transparency?
- How should NRCS prioritize partner contributions (financial and in-kind)?
- The 2018 Farm Bill encourages NRCS and partners to move RCPP projects toward environmental, economic, and social outcomes-based reporting. What are ideas for doing so?
- What are ways for NRCS to incentivize participation of historically underserved producers in RCPP projects?

William Northey,

Under Secretary, Farm Production and Conservation.

[FR Doc. 2019–02360 Filed 2–11–19; 4:15 pm]

BILLING CODE 3410–05–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Colorado Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of briefing 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 briefing meeting of the Colorado Advisory Committee to the Commission will convene at 10:00 a.m. (MST) on Friday, February 22, 2019 in the Wittemeyer Court Room of the Wolf Law Building at the University of Boulder, 2450 Kittredge Loop Drive, Boulder, CO 80309. The purpose of the briefing is to examine the backlog in citizenship and naturalization applications in Colorado.

DATES: Friday, February 22, 2019 (MST).
Times: 10:00 a.m.–6:00 p.m.

ADDRESSES: Wittemeyer Court Room, Wolf Law Building, University of Colorado Law School, 2450 Kittredge Loop Drive, Boulder, CO 80309.

FOR FURTHER INFORMATION CONTACT: Evelyn Bohor at *ebohor@usccr.gov,* or (303) 866–1040

SUPPLEMENTARY INFORMATION: If other persons who plan to attend the meeting require other accommodations, please contact Evelyn Bohor at *ebohor@usccr.gov* at the Rocky Mountain Office at least ten (10) working days before the scheduled date of the meeting.

Time will be set aside at the end of the briefing so that members of the public may address the Committee after the formal presentations have been completed. Persons interested in the issue are also invited to submit written comments; the comments must be received in the regional office by Friday, March 22, 2019. Written comments may be mailed to the Rocky Mountain Regional Office, U.S. Commission on Civil Rights, 1961 Stout Street, Suite 13–201, Denver, CO 80294, faxed to (303) 866–1040, or emailed to Evelyn Bohor at *ebohor@usccr.gov.* Persons who desire additional information may contact the Rocky Mountain Regional Office at (303) 866–1040.

Records and documents discussed during the meeting will be available for public viewing as they become available at *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzksAAA*; and clicking on the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Rocky Mountain Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Rocky Mountain Regional Office at the above phone number, email or street address.

Tentative Agenda

Friday, February 22, 2019 at 10:00 a.m.

I. Welcome and Introductions
II. Briefing
III. Open Session
IV. Adjournment

Exceptional Circumstance: Pursuant to 41 CFR 102–3.150, the notice for this meeting is given less than 15 calendar days prior to the meeting because of the exceptional circumstances of the federal government shutdown.

Dated: February 8, 2019.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2019–02295 Filed 2–13–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

Proposed Information Collection; Comment Request; Interim Procedures For Considering Requests and Comments From the Public for Textile and Apparel Safeguard Actions on Imports from Korea

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before April 15, 2019.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW, Washington, DC 20230 (or via the internet at *PRAcomments@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Maria D'Andrea-Yothers, Office of Textiles and Apparel, U.S. Department of Commerce, Tel.(202) 482–1550, *Maria.D'Andrea-Yothers@trade.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Article 4.1 of the U.S.-Korea Free Trade Agreement (the ''Agreement'') provides for a textile and apparel safeguard mechanism. This safeguard mechanism applies when, as a result of the reduction or elimination of a customs duty under the Agreement, a Korean textile or apparel article is being imported into the United States in such increased quantities, in absolute terms or relative to the domestic market for that article, and under such conditions as to cause serious damage or actual threat thereof to a U.S. industry producing a like or directly competitive article. In these circumstances, Article 4.1 permits the United States to (a) suspend any further reduction in the rate of duty provided for under Annex 2–B of the Agreement in the duty imposed on the article; or (b) increase duties on the imported article from Korea to a level that does not exceed the lesser of the prevailing U.S. normal trade relations (''NTR'')/most-favored-nation (''MFN'') duty rate for the article or the U.S. NTR/MFN duty rate in effect on the day before the Agreement enters into force.

The Statement of Administrative Action accompanying the U.S.-Korea Free Trade Agreement Implementation Act (the ''Act'') provides that the Committee for the Implementation of Textile Agreements (CITA) will issue procedures for requesting such safeguard measures, for making its determinations under section 332(a) of the Act, and for providing relief under section 332(b) of the Act.

In Proclamation No. 8783 (77 FR 14265, March 9, 2012), the President delegated to CITA his authority under Subtitle C of Title III of the Act with respect to textile and apparel safeguard measures.

The textile and apparel safeguard mechanism will be of considerable benefit to firms manufacturing textile and apparel goods in the United States in the event that an industry finds itself to be adversely impacted by preferential duty or duty-free imports of textiles and apparel from Korea.

CITA must collect information in order to determine whether a domestic textile or apparel industry is being adversely impacted by imports of these products from Korea, thereby allowing CITA to take corrective action to protect the viability of the domestic textile and apparel industry, subject to section 332(b) of the Act.

An interested party in the U.S. domestic textile and apparel industry may file a request for a textile and apparel safeguard action with CITA. Consistent with longstanding CITA practice in considering textile and apparel safeguard actions, CITA will consider an interested party to be an entity (which may be a trade association, firm, certified or recognized union, or group of workers) that is representative of either: (A) A domestic producer or producers of an article that is like or directly competitive with the subject Korean textile or apparel article; or (B) a domestic producer or producers of a component used in the production of an article that is like or directly competitive with the subject Korean textile or apparel article.

In order for a request to be considered, the requestor must provide the following information in support of a claim that a textile or apparel article from Korea is being imported into the United States in such increased quantities, in absolute terms or relative to the domestic market for that article, and under such conditions as to cause serious damage or actual threat thereof, to a U.S. industry producing an article that is like, or directly competitive with, the imported article: (1) Name and description of the imported article concerned; (2) import data demonstrating that imports of a Korea origin textile or apparel article that are like or directly competitive with the articles produced by the domestic industry concerned are increasing in absolute terms or relative to the domestic market for that article; (3) U.S. domestic production of the like or directly competitive articles of U.S. origin indicating the nature and extent of the serious damage or actual threat thereof, along with an affirmation that to the best of the requester's knowledge, the data represent substantially all of the domestic production of the like or directly competitive article(s) of U.S. origin; (4) imports from Korea as a percentage of the domestic market of the like or directly competitive article; and (5) all data available to the requester showing changes in productivity, utilization of capacity, inventories, exports, wages, employment, domestic prices, profits, and investment, and any other information, relating to the existence of serious damage or actual threat thereof caused by imports from Korea to the industry producing the like or directly competitive article that is the subject of the request. To the extent that such information is not available, the requester should provide best estimates and the basis therefore.

If CITA determines that the request provides the information necessary for it to be considered, CITA will publish a notice in the **Federal Register** seeking public comments regarding the request. The comment period shall be 30 calendar days. The notice will include a summary of the request. Any interested party may submit information to rebut, clarify, or correct public comments submitted by any interested party.

CITA will make a determination on any request it considers within 60 calendar days of the close of the comment period. If CITA is unable to make a determination within 60 calendar days, it will publish a notice in the **Federal Register**, including the date it will make a determination.

If a determination under section 322(b) of the Act is affirmative, CITA may provide tariff relief to a U.S.

industry to the extent necessary to remedy or prevent serious damage or actual threat thereof and to facilitate adjustment by the domestic industry to import competition. The import tariff relief is effective beginning on the date that CITA's affirmative determination is published in the **Federal Register**.

Entities submitting requests, responses or rebuttals to CITA may submit both a public and confidential version of their submissions. If the request is accepted, the public version will be posted on the dedicated Korea Free Trade Agreement textile safeguards section of the Office of Textile and Apparel (OTEXA) website. The confidential version of the request, responses or rebuttals will not be shared with the public as it may contain business confidential information. Entities submitting responses or rebuttals may use the public version of the request as a basis for responses.

II. Method of Collection

When an interested party files a request for a textile and apparel safeguard action with CITA, ten copies of any such request must be provided in a paper format. If business confidential information is provided, two copies of a non-confidential version must also be provided. If CITA determines that the request provides the necessary information to be considered, it publishes a **Federal Register** notice seeking public comments on the request. To the extent business confidential information is provided, a non-confidential version must also be provided. Any interested party may submit information to rebut, clarify, or correct public comments submitted by any interested party.

III. Data

OMB Control Number: 0625–0269.

Form Number(s): None.

Type of Review: Regular submission.

Affected Public: Individuals or Business.

Estimated Number of Respondents: 14 (4 for Request; 10 for Comments).

Estimated Time Per Response: 4 hours (for each Request) 4 hours (for each Comment).

Estimated Total Annual Burden Hours: 56 hours (16 hours for Requests; 40 hours for Comments).

Estimated Total Annual Cost to Public: $2,800.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Sheleen Dumas,

Departmental Lead PRA Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2019–02241 Filed 2–13–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–876]

Welded Line Pipe From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2016–2017

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that producers and/or exporters subject to this administrative review made sales of subject merchandise at less than normal value (NV). Interested parties are invited to comment on these preliminary results of review.

DATES: Applicable February 14, 2019.

FOR FURTHER INFORMATION CONTACT: David Goldberger or Ross Belliveau, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4136 or (202) 482–4952, respectively.

Scope of the Order

The merchandise subject to the order is welded line pipe.[1] The product is currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) item numbers: 7305.11.1030, 7305.11.1060, 7305.11.5000, 7305.12.1030, 7305.12.1060, 7305.12.5000, 7305.19.1030, 7305.19.5000, 7306.19.1010, 7306.19.1050, 7306.19.5110, and 7306.19.5150. Although the HTSUS numbers are provided for convenience and for customs purposes, the written product description remains dispositive.

SUPPLEMENTARY INFORMATION:

Background

Commerce is conducting this review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). On February 23, 2018, based on timely requests for review, in accordance with 19 CFR 351.221(c)(1)(i), we initiated an administrative review on welded line pipe from Korea.[2] In August 2018, we extended the preliminary results of this review to no later than January 3, 2019.[3] Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through the resumption of operations on January 28, 2019.[4] If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. The revised deadline for the preliminary results of this review is now February 12, 2019. For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.

Export price and constructed export price are 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. 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

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[1] For a complete description of the Scope of the Order, *see* Memorandum, ''Decision Memorandum for the Preliminary Results of the 2016–2017 Administrative Review of the Antidumping Duty Order on Welded Line Pipe from Korea,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 83 FR 8058 (February 23, 2018) (*Initiation Notice*).

[3] *See* Memorandum, ''Welded Line Pipe from the Republic of Korea: Extension of Deadline for Preliminary Results of 2016–2017 Antidumping Duty Administrative Review,'' dated August 9, 2018.

[4] *See* Memorandum, ''Deadlines Affected by the Partial Shutdown of the Federal Government,'' dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

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 directly at *http://enforcement.trade.gov/frn/*. The signed and electronic versions of the Preliminary Decision Memorandum are identical in content. A list of the topics discussed in the Preliminary Decision Memorandum is attached as the Appendix to this notice.

Preliminary Determination of No Shipments

Among the companies under review, HiSteel Co., Ltd. (HiSteel) properly filed a statement that it no shipments of subject merchandise to the United States during the POR.[5] Based on its certification and our analysis of U.S. Customs and Border Protection (CBP) information, we preliminarily determine that HiSteel had no reviewable transactions during the POR. Consistent with our practice, we are not preliminarily rescinding the review with respect to HiSteel, but, rather, we will complete the review for HiSteel and issue appropriate instructions to CBP based on the final results of this review.[6]

Preliminary Results of the Review

As a result of this review, we preliminarily determine the following weighted-average dumping margins for the period December 1, 2016, through November 30, 2017:

Exporter/producer	Weighted-average dumping margin (percent)
NEXTEEL Co., Ltd	59.09
SeAH Steel Corporation	26.47

Review-Specific Average Rate Applicable to the Following Companies:[7]

Exporter/producer	Dumping margin (percent)
AJU Besteel Co., Ltd	41.53
BDP International, Inc	41.53
Daewoo International Corporation	41.53
Dongbu Incheon Steel Co	41.53
Dongbu Steel Co., Ltd	41.53
Dongkuk Steel Mill	41.53
Dong Yang Steel Pipe	41.53
EEW Korea Co., Ltd	41.53
Husteel Co., Ltd	41.53
Hyundai RB Co. Ltd	41.53
Hyundai Steel Company/Hyundai HYSCO	41.53
Kelly Pipe Co., LLC	41.53
Keonwoo Metals Co., Ltd	41.53
Kolon Global Corp	41.53
Korea Cast Iron Pipe Ind. Co., Ltd	41.53
Kurvers Piping Italy S.R.L	41.53
MSTEEL Co., Ltd	41.53
Miju Steel MFG Co., Ltd	41.53
Poongsan Valinox (Valtimet Division)	41.53
POSCO	41.53
POSCO Daewoo	41.53
R&R Trading Co. Ltd	41.53
Sam Kang M&T Co., Ltd	41.53
Sin Sung Metal Co., Ltd	41.53
SK Networks	41.53
Soon-Hong Trading Company	41.53
Steel Flower Co., Ltd	41.53
TGS Pipe	41.53
Tokyo Engineering Korea Ltd	41.53

[5] *See* Letter from HiSteel Co., Ltd., ''Administrative Review of the Antidumping Order on Welded Line Pipe from Korea for the 2016–17 Review Period—No Shipments Letter,'' dated March 26, 2018.

[6] *See, e.g., Certain Frozen Warmwater Shrimp from Thailand; Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission of Review, Preliminary Determination of No Shipments; 2012–2013,* 79 FR 15951, 15952 (March 24, 2014), unchanged in *Certain Frozen Warmwater Shrimp from Thailand: Final Results f Antidumping Duty Administrative Review, Final Determination of No Shipments, and Partial Rescission of Review; 2012–2013,* 79 FR 51306, 51307 (August 28, 2014).

[7] This rate is based on the weighted-average of the margins calculated for those companies selected for individual review using the publicly-ranged U.S. quantities. Because we cannot apply our normal methodology of calculating a weighted-average margin due to requests to protect business proprietary information, we find this rate to be the best proxy of the actual weighted-average margin determined for the mandatory respondents. *See Ball Bearings and Parts Thereof from France, et al.: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part,* 75 FR 53661, 53663 (September 1, 2010); *see also* Memorandum, ''Calculation of the Review-Specific Average Rate for the Preliminary Results,'' dated concurrently with this notice.

Assessment Rates

Upon completion of the administrative review, Commerce shall determine, and CBP shall assess, antidumping duties on all appropriate entries.

Pursuant to 19 CFR 351.212(b)(1), where NEXTEEL Co., Ltd. (NEXTEEL) reported the entered value of its U.S. sales, we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the examined sales to the total entered value of the sales for which entered value was reported. SeAH Steel Corporation (SeAH) did not report actual entered value for all of its U.S. sales; in such instances, we calculated entered value in order to determine the assessment rates. Where either the respondent's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), or an importer-specific rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

For the companies which were not selected for individual review, we will assign an assessment rate based on the average [8] of the cash deposit rates calculated for NEXTEEL and SeAH. In accordance with Commerce's practice, for entries of subject merchandise during the POR for which HiSteel did not know that the merchandise was destined for the United States, we will instruct CBP to liquidate such entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. 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.[9]

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 for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for each specific company listed above will be that established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously investigated companies not participating in this review, the cash deposit will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the company participated; (3) if the exporter is not a firm covered in this review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent segment for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 4.38 percent, the all-others rate established in the LTFV investigation.[10] These deposit requirements, when imposed, shall remain in effect until further notice.

Disclosure and Public Comment

Commerce intends to disclose the calculations performed in connection with these preliminary results to interested parties within five days after the date of publication of this notice.[11] Interested parties may submit case briefs not later than seven days after the date on which the last verification report is issued in this proceeding.[12] Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than five days after the time limit for filing case briefs.[13] 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.[14] Case and rebuttal briefs should be filed using ACCESS.[15]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. An electronically-filed document must be received successfully in its entirety by ACCESS by 5 p.m. Eastern Time within 30 days after the date of publication of this notice.[16] Hearing 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 issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.[17]

Commerce intends to issue the final results of this administrative review, including the results of its analysis raised in any written briefs, not later than 120 days after the publication of these preliminary results in the **Federal Register**, unless otherwise extended.[18]

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: February 7, 2019.

Christian Marsh,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Preliminary Determination of No Shipments
V. Affiliation
VI. Discussion of the Methodology
  A. Comparisons to Normal Value
  1. Determination of Comparison Method
  2. Results of the Differential Pricing Analysis
  B. Product Comparisons
  C. Export Price and Constructed Export Price
  D. Normal Value
  1. Particular Market Situation
  2. Home Market Viability and Selection of Comparison Market
  3. Level of Trade
  4. Cost of Production Analysis
  5. Calculation of NV Based on CV
  E. Currency Conversion
VII. Duty Absorption

[8] This rate was calculated as discussed in footnote 7, above.

[9] *See* section 751(a)(2)(C) of the Act.

[10] *See Welded Line Pipe from the Republic of Korea and the Republic of Turkey: Antidumping Duty Orders,* 80 FR 75056, 75057 (December 1, 2015).

[11] *See* 19 CFR 351.224(b).

[12] *See* 19 CFR 351.309(c)(1)(ii).

[13] *See* 19 CFR 351.309(d)(1).

[14] *See* 19 CFR 351.309(c)(2) and (d)(2).

[15] *See* 19 CFR 351.303.

[16] *See* 19 CFR 351.310(c).

[17] *Id.*

[18] *See* Section 751(a)(3)(A) of the Act.

VIII. Recommendation

[FR Doc. 2019–02327 Filed 2–13–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG658

Fisheries of the South Atlantic; South Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting of the South Atlantic Fishery Management Council's (Council) Scientific and Statistical Committee (SSC).

SUMMARY: The Council will hold a meeting of its SSC to review the revision assessments for Blueline Tilefish, Red Grouper, Black Sea Bass, and Vermilion Snapper conducted by NMFS Southeast Fisheries Science Center (SEFSC) staff using the newly calibrated Marine Recreational Information Program (MRIP) catch estimates. See **SUPPLEMENTARY INFORMATION**.

DATES: The SSC meeting will be held via webinar on Monday, February 25, 2019, from 9 a.m. until 1 p.m.

ADDRESSES:

Meeting address: The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Mike Errigo at the Council office (see **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of the webinar.

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Mike Errigo; 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; phone: (843) 571–4366 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: *mike.errigo@safmc.net.*

SUPPLEMENTARY INFORMATION: This meeting is held to review the revision assessments for Blueline Tilefish, Red Grouper, Black Sea Bass, and Vermilion Snapper conducted by SEFSC staff using the newly calibrated MRIP catch estimates. The MRIP survey has undergone two major changes in recent years, both requiring calibration of the historic time series. In 2013 a change to the Access Point Angler Intercept Survey (APAIS) was implemented, changing how catch information was collected. In 2015, MRIP implemented side by side surveys of both the existing telephone-based Coastal Household Telephone Survey (CHTS) and the new mail-based Fishing Effort Survey (FES). The FES was fully implemented in 2018, changing how effort data was collected. Calibrations models were developed, and peer reviewed for these two methodology changes and subsequently used to calibrate the original MRIP catch estimates, transforming them from the old APAIS/CHTS currency into the new APAIS/FES currency. The SEFSC replaced the MRIP data in four recent assessments (Blueline Tilefish, Red Grouper, Black Sea Bass, and Vermilion Snapper) with the newly calibrated MRIP estimates, reran the assessments and presented the results to the SSC at their October 15–17, 2018 meeting in Charleston, SC. At that time, the SSC felt they did not have enough information to provide an adequate review of these revision assessments and asked to meet at a later date when all the information they requested could be provided.

Items to be addressed during this meeting:

1. Review the revision assessments and recommend if they are best scientific information available and usable for management.

2. Discuss what impacts the revised data had on the measures of assessment uncertainty.

3. Identify any additional analyses or information necessary to support making fishing level recommendations at the next meeting.

4. Provide any other comments or recommendations as necessary.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 5 business days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: February 11, 2019.

Tracey L. Thompson,

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

[FR Doc. 2019–02320 Filed 2–13–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG623

Pacific Fishery Management Council; Public Meetings and Hearings

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

ACTION: Notice of opportunities to submit public comments.

SUMMARY: The Pacific Fishery Management Council (Pacific Council) has begun its annual preseason management process for the 2019 ocean salmon fisheries off the U.S. West Coast. This notice informs the public of opportunities to provide comments on the development of 2019 ocean salmon management measures.

DATES: Written comments on the salmon management alternatives adopted by the Pacific Council at its March 2019 meeting, as described in its Preseason Report II, received electronically or in hard copy by 5 p.m. Pacific Time, April 1, 2019, will be considered in the Pacific Council's final recommendation for the 2019 management measures.

ADDRESSES: Documents will be available from the Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384, and will be posted on the Pacific Council website at *http://www.pcouncil.org.* You may submit comments by any one of the following methods:

- Written comments should be sent electronically to Mr. Phil Anderson, Chair, Pacific Fishery Management Council, via the Pacific Council's E-Portal by visiting *https://pfmc.psmfc.org.*
- Comments can also be submitted to NMFS via the Federal e-Rulemaking Portal. Go to *http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2018-0128,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments. All comments received via the Federal e-Rulemaking Portal are a part of the public record and will generally be posted for public viewing on *http://www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS and the Pacific Council will accept anonymous

comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

• *Mail:* Mr. Phil Anderson, Chair, Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384. Comments submitted by mail will be entered into the Pacific Council's E-Portal by Pacific Council Staff.

FOR FURTHER INFORMATION CONTACT: Ms. Robin Ehlke, Pacific Council, telephone: 503–820–2280. For information on submitting comments via the Federal e-Rulemaking portal, contact Peggy Mundy, NMFS West Coast Region, telephone: 206–526–4323; email: *peggy.mundy@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Pacific Council has announced the schedule of reports, public meetings, and hearings for the 2019 ocean salmon fisheries on its website (*http://www.pcouncil.org*). The Pacific Council will adopt alternatives for 2019 ocean salmon fisheries at its March 5–12, 2019, meeting at the Hilton, Vancouver, WA. Details of this meeting are available on the Pacific Council's website (*http://www.pcouncil.org*). On March 21, 2019, ''Preseason Report II—Proposed Alternatives and Environmental Assessment Part 2 for 2019 Ocean Salmon Fishery Regulations'' is scheduled to be posted on the Pacific Council website at *http://www.pcouncil.org.* The report will include a description of the salmon management alternatives and a summary of their biological and economic impacts. Public hearings will be held to receive comments on the proposed ocean salmon fishery management alternatives adopted by the Pacific Council. Written comments received at the public hearings and a summary of oral comments at the hearings will be provided to the Pacific Council at its April meeting.

All public hearings begin at 7 p.m. at the following locations:

• March 25, 2019: Chateau Westport, Beach Room, 710 West Hancock, Westport, WA 98595, telephone 360–268–9101.

• March 25, 2019: Red Lion Hotel, South Umpqua Room, 1313 North Bayshore Drive, Coos Bay, OR 97420, telephone 541–267–4141.

• March 26, 2019: Hampton Inn, Grand Ballroom, 1160 Airport Park Blvd., Ukiah, CA 95482, telephone 707–462–6555.

Comments on the alternatives the Pacific Council adopts at its March 2019 meeting, and described in its Preseason Report II, may be submitted in writing or electronically as described under **ADDRESSES**, or verbally or in writing at any of the public hearings held on March 25–26, 2019, or at the Pacific Council's meeting, April 9–16, 2019, at the Doubletree by Hilton Sonoma, in Rohnert Park, CA. Details of these meetings will be available on the Pacific Council's website (*http://www.pcouncil.org*) and will be published in the **Federal Register**. Written and electronically submitted comments must be received no later than 5 p.m. Pacific Time, April 1, 2019, in order to be included in the briefing book for the April Council meeting where they will be considered in the adoption of the Pacific Council's final recommendation for the 2019 salmon fishery management measures. All comments received accordingly will be reviewed and considered by the Pacific Council and NMFS.

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

Dated: February 11, 2019.

Karen H. Abrams,

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

[FR Doc. 2019–02329 Filed 2–13–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG802

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will hold a one-day meeting of its Shrimp Advisory Panel (AP).

DATES: The meeting will convene on Thursday, March 21, 2019, 8:30 a.m. to 5 p.m., EDT. For agenda details, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting will be held at the Gulf of Mexico Fishery Management Council office, 4107 W Spruce Street, Suite 200, Tampa, FL 33607; telephone: (813) 348–1630.

FOR FURTHER INFORMATION CONTACT: Dr. Matt Freeman, Economist, Gulf of Mexico Fishery Management Council; *matt.freeman@gulfcouncil.org,* telephone: (813) 348–1630. The Council's website, *www.gulfcouncil.org* also has details on the meeting location, proposed agenda, webinar listen-in access, and other materials.

SUPPLEMENTARY INFORMATION: The following items are on the agenda, though agenda items may be addressed out of order (changes will be noted on the Council's website when possible).

Thursday, March 21, 2019

Introductions of members, election of chair and vice chair, adoption of agenda, and approval of minutes from the April 5, 2018 meeting. Staff will review the Plan of Work with the members. The advisory panel will discuss the Biological review of Texas closure; review the new stock assessments for brown, white and pink shrimp; and receive an update on shrimp catch, effort, Catch Per Unit Effort (CPUE), turtle threshold update, and juvenile red snapper effort threshold. The AP will review Shrimp Amendment 18; and discuss Research Priority Review.

—Meeting Adjourns—

The meeting will be broadcast via webinar. You may register for the listen-in access by visiting *www.gulfcouncil.org* and clicking on the AP meeting on the calendar.

The Agenda is subject to change, and the latest version along with other meeting materials will be posted on *www.gulfcouncil.org* as they become available.

Although other non-emergency issues not on the agenda may come before the group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during this meeting. Actions will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Pereira at the Gulf Council office (see **ADDRESSES**), at least 5 working days prior to the meeting.

Dated: February 11, 2019.

Tracey L. Thompson,

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

[FR Doc. 2019–02323 Filed 2–13–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG806

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will hold a meeting of its Law Enforcement Technical Committee (LETC), in conjunction with the Gulf States Marine Fisheries Commission's Law Enforcement Committee (LEC).

DATES: The meeting will convene on Wednesday, March 20, 2019; beginning at 8:30 a.m. and adjourn at 5 p.m.

ADDRESSES: The meeting will be held at the JW Marriott Hotel, located at 614 Canal Street, New Orleans, LA 70130; telephone: (504) 525–6500.

Council address: Gulf of Mexico Fishery Management Council, 4107 W Spruce Street, Suite 200, Tampa, FL 33607; telephone: (813) 348–1630.

FOR FURTHER INFORMATION CONTACT: Dr. Ava Lasseter, Anthropologist, Gulf of Mexico Fishery Management Council; *ava.lasseter@gulfcouncil.org*, telephone: (813) 348–1630, and Mr. Steve VanderKooy, Inter-jurisdictional Fisheries (IJF) Coordinator, Gulf States Marine Fisheries Commission; *svanderkooy@gsmfc.org,* telephone: (228) 875–5912.

SUPPLEMENTARY INFORMATION: The items of discussion on the agenda are as follows:

Joint Gulf Council's Law Enforcement Technical Committee and Gulf States Marine Fisheries Commission's Law Enforcement Committee Meeting Agenda

Wednesday, March 20, 2019, 8:30 a.m. Until 5 p.m.

1. Introductions and Adoption of Agenda
2. Approval of Minutes (Joint Meeting October 17, 2018)

Gulf Council LETC Items

3. Recreational Red Snapper State Management Programs—new action for federal water closures and update on final action
4. Historical Captain Endorsement action—update
5. Review of Council Actions to determine Law Enforcement Implications
6. Issue of state-licensed for-hire boats and privately owned boats taking paying passengers to fish for red snapper in federal waters
7. Developing a Possible Team of the Year Award
8. LETC Other Business

GSMFC LEC Items

9. Future of JEAs and JEA Funding Discussion
10. IJF Program Activity
    (a) Cobia Profile
    (b) Red Drum Profile
    (c) Officers' Pocket Guide
    (d) Annual License and Fees
    (e) Law Summary (red book)
11. State Report Highlights
    (a) Florida
    (b) Alabama
    (c) Mississippi
    (d) Louisiana
    (e) Texas
    (f) U.S. CG
    (g) NOAA OLE
    (h) U.S. FWS
12. Other Business

—Meeting Adjourns

The Agenda is subject to change, and the latest version along with other meeting materials will be posted on *www.gulfcouncil.org* as they become available.

The Law Enforcement Technical Committee consists of principal law enforcement officers in each of the Gulf States, as well as the NOAA Law Enforcement, U.S. Fish and Wildlife Service, the U.S. Coast Guard, and the NOAA General Counsel for Law Enforcement.

Although other non-emergency issues not on the agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Actions will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Pereira at the Gulf Council Office (see **ADDRESSES**), at least 5 working days prior to the meeting.

Dated: February 11, 2019.

Tracey L. Thompson,

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

[FR Doc. 2019–02324 Filed 2–13–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG800

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will hold a webinar to collect comments on the Generic Amendment—Carryover of Unharvested Quota.

DATES: The meeting will convene via webinar on Monday, March 4, 2019, at 6 p.m. and will conclude no later than 9 p.m.

ADDRESSES: The meeting will be held via webinar.

Council address: Gulf of Mexico Fishery Management Council, 4107 W Spruce Street, Suite 200, Tampa, FL 33607; telephone: (813) 348–1630.

FOR FURTHER INFORMATION CONTACT: Ryan Rindone, Fishery Biologist, Gulf of Mexico Fishery Management Council; *ryan.rindone@gulfcouncil.org,* telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: Council staff will brief the public on the purpose and need of the amendment. The Council is currently considering a provision to carry over the uncaught quota for applicable species to the following fishing year, given certain conditions. Council staff will also provide an overview of the actions and alternatives considered in the amendment, including the Council's preferred alternatives. Staff and Council member will be available to answer any questions, and the public will have the opportunity to provide testimony on the amendment and other related testimony.

The schedule is as follows: Monday, March 4, 2019; 6 p.m.–9 p.m.

The meeting will be broadcast via webinar. You may register for the webinar by visiting *www.gulfcouncil.org* and clicking on the meeting on the calendar. The agenda is subject to change, and the latest version along with other meeting materials will be

posted on *www.gulfcouncil.org* as they become available.

Dated: February 11, 2019.

Tracey L. Thompson,

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

[FR Doc. 2019–02322 Filed 2–13–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG710

Fisheries of the South Atlantic; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR 59 Assessment Scoping webinar II for South Atlantic Greater Amberjack.

SUMMARY: The SEDAR 59 assessment of the South Atlantic stock of Greater Amberjack will consist of a series of webinars. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 59 Assessment Scoping webinar II has been rescheduled for Tuesday, February 26, 2019, from 9 a.m. until 1 p.m.

ADDRESSES:

Meeting address: The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julia Byrd at SEDAR (see **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar.

SEDAR address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405; *www.sedarweb.org.*

FOR FURTHER INFORMATION CONTACT: Julia Byrd, SEDAR Coordinator, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; phone: (843) 571–4366; email: *julia.byrd@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions, have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. The product of the SEDAR webinar series will be a report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses, and describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, Highly Migratory Species Management Division, and Southeast Fisheries Science Center. Participants include: Data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and non-governmental organizations (NGOs); international experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion in the Assessment Scoping webinar II are as follows:

Participants will review data and discuss data issues, as necessary, and initial modeling issues.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

This meeting is accessible to people with disabilities. Requests for auxiliary aids should be directed to the SAFMC office (see **ADDRESSES**) at least 10 business days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: February 11, 2019.

Tracey L. Thompson,

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

[FR Doc. 2019–02321 Filed 2–13–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID: USAF–2019–HQ–0002]

Proposed Collection; Comment Request

AGENCY: Department of the Air Force DoD.

ACTION: Information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Department of the Air Force announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by April 15, 2019.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Chief Management Officer, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.

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

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please contact Jeffrey Richer, Building 1606, 9 Eglin Street, Hanscomb AFB, MA 01731–2100, ATTN: EMNS Program; Phone 781–225–4319; Email *AFLCMC.HNII.EMNS@us.af.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Emergency Mass Notification System (EMNS); OMB Control Number 0701–XXXX.

Needs and Uses: The Emergency Mass Notification System is an Air Force enterprise-wide system that employs commercial software to send notices to the AF population through desktop, mobile application, telephone, text messaging alerts, and Giant Voice systems at Main Operating Bases (MOB). This system provides individuals with near-real time notifications sent directly from the AF/MAJCOM/Installation command posts.

This single AF enterprise solution will provide lifesaving and mission protective measures within the AF. The system shall have the capability of delivering reliable and secure emergency threat notifications to all personnel at all AF locations on a 24 hour/7 day a week basis.

EMNS is designated as a National Security System (NSS). EMNS must be maintained as a high integrity, high availability capability vital to operational readiness. The absence of such a system could result in immediate and sustained loss of mission effectiveness.

Affected Public: Individuals and households.

Annual Burden Hours: 16,667.

Number of Respondents: 1,000,000.

Responses per Respondent: 1.

Annual Responses: 1,000,000.

Average Burden per Response: 1 minute.

Frequency: On Occasion.

Dated: February 11, 2019.

Shelly E. Finke,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2019–02351 Filed 2–13–19; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 6440–009]

Lakeport Hydroelectric One, LLC; Notice of Comment Period Extension

On December 19, 2018, Lakeport Hydroelectric One, LLC held a public meeting and site visit in support of the re-licensing process for the Lakeport Hydroelectric Project No. 6440. Pursuant to 18 CFR 16.8(b)(5), participants must file comments within 60 days of the public meeting. Due to the funding lapse at certain federal agencies between December 22, 2018 and January 25, 2019, the Commission is extending the comment period to March 25, 2019.

Dated: February 8, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–02342 Filed 2–13–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP19–58–000]

Florida Gas Transmission Company, LLC; Notice of Request Under Blanket Authorization

Take notice that on January 29, 2019, Florida Gas Transmission Company, LLC (FGT), 1300 Main Street, Houston, Texas 77002, filed a prior notice application pursuant to sections 157.205, 157.208, 157.210 and 157.211 of the Federal Energy Regulatory Commission's (Commission) regulations under the Natural Gas Act (NGA), and FGT's blanket certificate issued in Docket No. CP82–553–000.[1] FGT requests authorization to construct/modify, install, own, maintain and operate, certain natural gas pipeline facilities (including lateral looping) and appurtenant facilities in Volusia County, Florida; and to install back pressure regulation and appurtenant facilities on the existing FGT East Leg mainlines in Orange County, Florida, in support of the proposed Sanford Project (Project).

This Project will enable FGT to increase firm transportation service hourly flow rights to the Florida Power & Light (FPL) Sanford power generation plant in Volusia County, Florida, from 15.7 MMMBtu/hr to 17.2 MMMBtu/hr, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

The filing may also be viewed on the web 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, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application should be directed to Blair Lichtenwalter, Senior Director of Certificates, Florida Gas Transmission Company, LLC, 1300 Main Street, Houston, Texas 77002, or call (713) 989–2605, or FAX (713) 989–1205, or email: *Blair.Lichtenwalter@energyttrnsfer.com.*

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenter will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the

[1] Florida Gas Transmission Company, 21 FERC ¶ 62,236 (1982).

Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

Comment Date: 5:00 p.m. Eastern Time on April 9, 2019.

Dated: February 8, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–02345 Filed 2–13–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP18–186–000]

Transcontinental Gas Pipe Line Company, LLC; Notice of Availability of the Environmental Assessment for the Proposed Southeastern Trail Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the Southeastern Trail Project, proposed by Transcontinental Gas Pipe Line Company, LLC (Transco) in the above-referenced docket. Transco requests authorization to construct and operate about 7.7 miles of new natural gas pipeline located along the existing Transco Mainline, expand three existing compressor stations in Virginia, and modify 21 existing facilities in South Carolina, Georgia, and Louisiana.

The EA assesses the potential environmental effects of the construction and operation of the Southeastern Trail Project in accordance with the requirements of the National Environmental Policy Act (NEPA). The FERC staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The specific facilities proposed as part of the Southeastern Trail Project are as follows:

☐ *Manassas Loop in Fauquier and Prince William Counties, Virginia:* Construction of approximately 7.7 miles of new 42-inch-diameter pipeline loop,[1] co-located along the Transco Mainline from milepost 1568.13 to 1575.85;

☐ *Compressor Station 185 in Prince William County, Virginia:* Uprating the existing electric-driven compression unit driver from 25,000 to 30,000 horsepower (HP);

☐ *Compressor Station 175 in Fluvanna County, Virginia:* Installing one new 22,490 HP turbine-driven compression unit, uprating the existing electric-driven compression unit driver from 33,000 to 41,250 HP;

☐ *Compressor Station 165 in Pittsylvania County, Virginia:* Installing two new 22,490 HP turbine-driven compression units and abandoning 10 compressor units (totaling 20,000 HP) and related equipment;

☐ flow reversal modifications and/or deodorization modifications at:

○ Compressor Station 65 in St. Helena Parish, Louisiana;

○ Compressor Station 115 in Coweta County, Georgia;

○ Compressor Station 116 in Carroll County, Georgia;

○ Compressor Station 120 in Henry County, Georgia;

○ Compressor Station 125 in Walton County, Georgia;

○ Compressor Station 130 in Madison County, Georgia;

○ Compressor Station 135 in Anderson County, South Carolina;

○ Compressor Station 140 in Spartanburg County, South Carolina; and

○ installation of deodorization facilities at 13 existing mainline valve facilities in South Carolina and Georgia along the Transco Mainline.

The Commission mailed a copy of this *Notice of Availability* to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; and newspapers and libraries in the project area. The EA is only available in electronic format. It may be viewed and downloaded from the FERC's website (*www.ferc.gov*), on the Environmental Documents page (*https://www.ferc.gov/industries/gas/enviro/eis.asp*). In addition, the EA may be accessed by using the eLibrary link on the FERC's website. Click on the eLibrary link (*https://www.ferc.gov/docs-filing/elibrary.asp*), click on General Search, and enter the docket number in the ''Docket Number'' field, excluding the last three digits (*i.e.,* CP18–186). Be sure you have selected an appropriate date range. 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.

Any person wishing to comment on the EA may do so. Your comments should focus on EA's disclosure and discussion of potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that the Commission has the opportunity to consider your comments prior to making its decision on this project, it is important that we receive your comments in Washington, DC on or before 5:00 p.m. Eastern Time on March 11, 2019.

For your convenience, there are three methods you can use to file your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the eComment feature on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. This is an easy method for submitting brief, text-only comments on a project;

(2) You can also file your comments electronically using the eFiling feature on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.*'' You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the project docket number (CP18–186–000) with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426.

Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214). Motions to intervene are more fully described at *http://www.ferc.gov/resources/guides/how-to/intervene.asp.* Only intervenors

[1] A pipeline loop is a segment of pipe constructed parallel to an existing pipeline to increase capacity.

have the right to seek rehearing or judicial review of the Commission's decision. The Commission may grant affected landowners and others with environmental concerns intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which no other party can adequately represent. Simply filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website (*www.ferc.gov*) using the eLibrary link. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Dated: February 8, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–02344 Filed 2–13–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2035–099]

City and County of Denver, Colorado; Notice of Availability of Final Supplemental Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission or FERC) regulations, 18 Code of Federal Regulations (CFR) Part 380, Commission staff prepared a Final Supplemental Environmental Assessment (Supplemental EA), to supplement a U.S. Army Corps of Engineers' (Corps) Final Environmental Impact Statement (Final EIS) completed on April 25, 2014. The Corps' Final EIS addressed a proposal by the City and County of Denver, Colorado (Denver Water) to enlarge its Moffat Collection System. The Commission acted as a cooperating agency in the preparation of the Final EIS because Gross Reservoir, a component of the Moffat Collection System which would be enlarged under the proposal, is also a feature of the Commission-licensed Gross Reservoir Hydroelectric Project No. 2035. On November 25, 2016, Denver Water filed with the Commission its application to raise the project's Gross Dam, enlarge Gross Reservoir, and amend the project license. The project is located on South Boulder Creek near the City of Boulder, Boulder County, Colorado. It occupies a total of 1,056.92 acres of federal lands within the Roosevelt National Forest administered by the U.S. Forest Service, and lands administered by the U.S. Bureau of Land Management.

The Final Supplemental EA analyzes potential environmental effects specific to a Commission approval of Denver Water's proposal, including amendment of the project license, which were not addressed in the 2014 Final EIS. Based on staff's independent analysis in the Supplemental EA, Commission approval of Denver Water's proposal, as mitigated by the environmental measures discussed in the Final Supplemental EA, would not constitute a major federal action significantly affecting the quality of the human environment.

A copy of the Final Supplemental EA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov/docs-filing/efiling.asp* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, 202–502–8659.

For further information, contact Rebecca Martin by telephone at 202–502–6012 or by email at *Rebecca.Martin@ferc.gov.*

Dated: February 8, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–02334 Filed 2–13–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2905–033]

Village of Enosburg Falls; Municipal Water and Light Department; Notice of Comment Period Extension

On November 8, 2018, the Village of Enosburg Falls, Vermont held a public meeting and site visit in support of the re-licensing process for the Enosburg Falls Hydroelectric Project No. 2905. Pursuant to 18 CFR 16.8(b)(5), participants must file comments within 60 days of the public meeting. Due to the funding lapse at certain federal agencies between December 22, 2018 and January 25, 2019, the Commission is extending the comment period to February 12, 2019.

Dated: February 8, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–02341 Filed 2–13–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC19–3–000]

Commission Information Collection Activities (FERC–546); Consolidated Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Comment request.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is submitting its information collection FERC–546 (Certificated Rate Filings: Gas Pipeline Rates) to the Office of Management and Budget (OMB) for review of the information collection requirements. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission previously published a Notice in the **Federal Register** on 11/2/2018, requesting public comments. The Commission received no comments on the FERC–546 and will make this notation in its submittal to OMB.

DATES: Comments on the collection of information are due by March 18, 2019.

ADDRESSES: Comments filed with OMB, identified by the OMB Control No.

1902–0155 (FERC–546), should be sent via email to the Office of Information and Regulatory Affairs: *oira_submission@omb.gov.* Attention: Federal Energy Regulatory Commission Desk Officer. The Desk Officer may also be reached via telephone at 202–395–8528.

A copy of the comments should also be sent to the Commission, in Docket No. IC19–3–000, by either of the following methods:

- *eFiling at Commission's Website: http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* by telephone at (202) 502–8663, and by fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: FERC–546, Certificated Rate Filings: Gas Pipeline Rates.

OMB Control No.: 1902–0155.

Type of Request: Three-year extension of the FERC–546 information collection requirements with no changes to the current reporting requirements.

Abstract: The requirements of the FERC–546 information collection are contained within the Commission's regulations in 18 CFR parts 154.7, 154.202, 154.204–154.208, 154.602–154.603, 284.501–284.505, and 154.4. The Commission reviews the FERC–546 materials to decide whether to approve rates and tariff changes associated with an application for a certificate under Natural Gas Act (NGA) section 7(c). Additionally, FERC reviews FERC–546 materials in NGA section 4(f), storage applications, to evaluate an applicant's market power and determine whether to grant market-based rate authority to the applicant. The Commission uses the information in FERC–546 to monitor jurisdictional transportation, natural gas storage, and unbundled sales activities of interstate natural gas pipelines and Hinshaw [1] pipelines. In addition to fulfilling the Commission's obligations under the NGA, the FERC–546 enables the Commission to monitor the activities and evaluate transactions of the natural gas industry, ensure competitiveness, and improve efficiency of the industry's operations. In summary, the Commission uses the information to:

- Ensure adequate customer protections under NGA section 4(f);
- review rate and tariff changes filed under NGA section 7(c) for certification of natural gas pipeline transportation and storage services;
- provide general industry oversight; and
- supplement documentation during the pipeline audits process.

Failure to collect this information would prevent the Commission from monitoring and evaluating transactions and operations of jurisdictional pipelines and performing its regulatory functions.

Type of Respondents: Jurisdictional pipeline companies and storage operators.

Estimate of Annual Burden: [2] The Commission estimates the annual public reporting burden for the information collection as:

FERC–546 (CERTIFICATED RATE FILINGS: GAS PIPELINE RATES)

	Annual number of respondents (1)	Annual number of responsesper respondent (2)	Total number of responses (rounded) (1) * (2) = (3)	Average burden and cost per response [3] (rounded) (4)	Total annual burden hours and total annual cost (rounded) (3) * (4) = (5)	Cost per respondent ($) (rounded) (5) ÷ (1)
Pipeline Certificate Filings and Storage Applications.	51	[4] 1.471	75	500 hrs.; $40,000	37,500 hrs.; $3,000,000	[5] $58,824

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: February 8, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–02332 Filed 2–13–19; 8:45 am]

BILLING CODE 6717–01–P

[1] Hinshaw pipelines are those that receive all out-of-state gas from entities within or at the boundary of a state if all the natural gas so received is ultimately consumed within the state in which it is received, 15 U.S.C. 717(c). Congress concluded that Hinshaw pipelines are ''matters primarily of local concern,'' and so are more appropriately regulated by pertinent state agencies rather than by FERC. The Natural Gas Act section 1(c) exempts Hinshaw pipelines from FERC jurisdiction. A Hinshaw pipeline, however, may apply for a FERC certificate to transport gas outside of state lines.

[2] ''Burden'' is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, reference 5 Code of Federal Regulations 1320.3.

[3] The hourly cost (for salary plus benefits) uses the figures from the Bureau of Labor Statistics, May 2017, for positions involved in the reporting and recordkeeping requirements. These figures include salary (*https://www.bls.gov/oes/current/naics2_22.htm*) and benefits (*http://www.bls.gov/news.release/ecec.nr0.htm*) and are:

Electrical Engineer (Occupation Code: 17–2071; $66.90/hour)

Management Analyst (Occupation Code: 13–1111; $63.32/hour)

Accounting (Occupation Code: 13–2011; $56.59/hours)

Computer and Mathematical (Occupation Code: 15–0000; $63.25/hour)

Legal (Occupation Code: 23–0000; $143.68/hour)

The average hourly cost (salary plus benefits) is calculated weighting each of the previously mentioned wage categories as follows: $66.90/hour (0.4) + $63.32/hour (0.2) + $56.59/hour (0.1) + $63.25/hour (0.1) + $143.68/hour (0.2) = $80.14/hour. The Commission rounds this figure to $80/hour.

[4] This figure was calculated by dividing the total number of responses (75) by the total number of respondents (51). The resulting figure was then rounded to the nearest thousandth place.

[5] Rounded from $58,823.53.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14692–001]

Moriah Hydro Corporation; Notice of Comment Period Extension

On January 8, 2019, the Commission issued a notice setting March 9, 2019, as the end of the formal period to file comments on the preliminary permit application for the Lyon Mountain Energy Storage Project No. 14692. Due to the funding lapse at certain federal agencies between December 22, 2018 and January 25, 2019, the Commission is extending the comment period until March 26, 2019.

Dated: February 8, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–02333 Filed 2–13–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP18–46–000, CP18–46–001]

Adelphia Gateway, LLC; Notice of Reopening of Comment Period

On January 4, 2019, the Commission issued a notice setting February 3, 2019, as the end of the formal period to file comments on the Adelphia Gateway Project environmental assessment. Due to the funding lapse at certain federal agencies between December 22, 2018 and January 25, 2019, the Commission is reopening the comment period until March 1, 2019.

Dated: February 8, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–02338 Filed 2–13–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2727–092]

Black Bear Hydro Partners, LLC; Notice of Comment Period Extension

On November 21, 2018, the Commission issued a notice setting January 20, 2019 as the end of the formal period to file comments on the draft environmental assessment for the Ellsworth Hydroelectric Project No. 2727. Pursuant to 18 CFR 5.25(d), modified mandatory prescriptions or terms and conditions must be filed no later than 60 days following the date for filing of comments. Due to the funding lapse at certain federal agencies between December 22, 2018 and January 25, 2019, the Commission is extending the comment period for the draft environmental assessment to February 23, 2019 and the date for filing modified prescriptions, terms, and conditions to April 24, 2019.

Dated: February 8, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–02335 Filed 2–13–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14893–000]

New England Hydropower Company, LLC; Notice of Comment Period Extension

On December 27, 2018, the Commission issued a notice setting February 25, 2019, as the end of the formal period to file comments on the preliminary permit application for the Delaware Canal Ground Hog Lock Hydroelectric Project No. 14893. Due to the funding lapse at certain federal agencies between December 22, 2018 and January 25, 2019, the Commission is extending the comment period until March 26, 2019.

Dated: February 8, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–02337 Filed 2–13–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2790–072]

Boott Hydropower, LLC; Notice of Comment Period Extension

On January 28, 2019, Boot Hydropower, LLC filed a revised study plan in support of the re-licensing process for the Lowell Hydroelectric Project No. 2790. Pursuant to 18 CFR 5.13(b), participants may file comments within 15 days of the date the potential applicant files the revised study plan; and pursuant to 18 CFR 5.13(c), the Director of Energy Projects will issue a study plan determination within 30 days of the date the potential applicant files its revised study plan. Due to the funding lapse at certain federal agencies between December 22, 2018 and January 25, 2019, the Commission is extending the comment period on the revised study plan to February 27, 2019, and the issuance date for the Director's study plan determination to March 14, 2019.

Dated: February 8, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–02336 Filed 2–13–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2883–009]

Aquenergy Systems, LLC; Notice of Comment Period Extension

On November 1, 2018, the Commission issued a notice setting January 7, 2019, as the end of the formal period to file scoping comments on the license application for the Fries Hydroelectric Project No. 2883. Due to the funding lapse at certain federal agencies between December 22, 2018 and January 25, 2019, the Commission is extending the comment period until February 25, 2019.

Dated: February 8, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–02340 Filed 2–13–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2839–015]

Village of Lyndonville Electric Department; Notice of Comment Period Extension

On December 17, 2018, Commission staff issued notice that the Village of Lyndonville Electric Department's license application for the Great Falls Hydroelectric Project No. 2839 was ready for environmental analysis. The notice established a deadline of February 15, 2019 for filing motions to intervene and protests, comments, recommendations, terms and conditions, and prescriptions. The notice also established a deadline of April 1, 2019 for filing reply comments. Due to the funding lapse at certain

federal agencies between December 22, 2018 and January 25, 2019, the Commission is extending the initial filing deadline to March 22, 2019 and the deadline for reply comments to May 6, 2019.

Dated: February 8, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–02339 Filed 2–13–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP19–31–000]

Southern Star Central Gas Pipeline Docket; Notice of Intent To Prepare an Environmental Assessment for the Proposed Lines DT and DS Replacement Project, and Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment that will discuss the environmental impacts of the Lines DT and DS Replacement Project (Project) involving construction and operation of facilities by Southern Star Central Gas Pipeline (Southern Star) in Anderson and Franklin Counties, Kansas. The Commission will use this EA in its decision-making process to determine whether the Project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies about issues regarding the project. The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from its action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires the Commission to discover concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00 p.m. Eastern Time on March 11, 2019.

You can make a difference by submitting your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the EA. Commission staff will consider all filed comments during the preparation of the EA.

If you sent comments on this project to the Commission before the opening of this docket on December 21, 2018, you will need to file those comments in Docket No. CP19–31–000 to ensure that they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable easement agreement. You are not required to enter into an agreement. However, if the Commission approves the project, that approval conveys with it the right of eminent domain. Therefore, if you and the company do not reach an easement agreement, the pipeline company could initiate condemnation proceedings in court. In such instances, compensation would be determined by a judge in accordance with state law.

Southern Star provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC website (*www.ferc.gov*) at *https://www.ferc.gov/resources/guides/gas/gas.pdf.*

Public Participation

The Commission offers a free service called eSubscription which makes it easy to stay informed of all issuances and submittals regarding the dockets/projects to which you subscribe. These instant email notifications are the fastest way to receive notification and provide a link to the document files which can reduce the amount of time you spend researching proceedings. To sign up go to *www.ferc.gov/docs-filing/esubscription.asp.*

For your convenience, there are three methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the eComment feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.*'' You will be asked to select the type of filing you are making; a comment on a particular project is considered a ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address. Be sure to reference the project docket number (CP19–31–000) with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426.

Summary of the Proposed Project

Southern Star proposes to abandon two pipelines and construct one larger diameter pipeline to replace the pipelines being abandoned, in Anderson and Franklin Counties, Kansas. The Project consists of the following:

- Construction of 31.5 miles of new 36-inch-diameter pipeline, designated as Line DPA, and three small-diameter (*i.e.,* 2 to 4 inches) pipeline laterals, totaling 5.94 miles, the new pipelines will replace Southern Star's existing 20-inch-diameter pipeline, designated as Line DS (31.4 miles of which 29.4 miles will be removed and 2 miles will be abandoned in place), and existing 26-inch-diameter pipeline, designated as Line DT (31.8 miles of which 29 miles will be removed and 2.8 miles will be abandoned in place) as part of the Project;
- modifications at two existing compressor stations (Ottawa Compressor Station [CS] and Welda CS),

five existing tie-ins, and associated auxiliary and appurtenant facilities; and

• construction of one new regulator/measuring station (Richmond Regulator Station), two new launchers and receivers, three new mainline valves (MLVs), and four new tie-ins along the new pipeline laterals.

The general location of the project facilities is shown in appendix 1.[1]

Land Requirements for Construction

Constructing the proposed facilities would require the use of approximately 1,081.5 acres of land, while 300.4 acres would be permanently affected during operation of the Project. The total acreage of land that would be affected by construction of aboveground facilities is 34.9 acres.

Southern Star proposes to co-locate 28.6 miles (approximately 91 percent) of the new Line DPA within or adjacent to existing corridors. Southern Start also proposes to overlap temporary workspace for the new Line DPA with its existing Lines DT, DS, or DP easement. Southern Star would use a 110-foot-wide construction right-of-way for Line DPA. ATWS needed for the Project would total 21.5 acres. ATWS would be restored to pre-existing conditions following construction activities, resulting in no permanent impacts on these areas. Southern Star would use 11 temporary contractor/pipe yards to facilitate construction of the Project. The contractor/pipe yards would be used primarily for the staging, parking, and storage of construction equipment and materials. After completion of construction, the contractor/pipe yards would be returned to pre-construction conditions unless otherwise agreed upon with the landowner and submitted to FERC for review and approval.

The EA Process

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

• Geology and soils;
• water resources and wetlands;
• vegetation and wildlife;
• threatened and endangered species;
• cultural resources;
• land use;
• air quality and noise;
• public safety; and
• cumulative impacts

Commission staff will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

The EA will present Commission staffs' independent analysis of the issues. The EA will be available in electronic format in the public record through eLibrary[2] and the Commission's website (*https://www.ferc.gov/industries/gas/enviro/eis.asp*). If eSubscribed, you will receive instant email notification when the EA is issued. The EA may be issued for an allotted public comment period. Commission staff will consider all comments on the EA before making recommendations to the Commission. To ensure Commission staff have the opportunity to address your comments, please carefully follow the instructions in the Public Participation section.

With this notice, the Commission is asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate in the preparation of the EA.[3] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultation Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission is are using this notice to initiate consultation with the applicable State Historic Preservation Office (SHPO), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[4] Commission staff will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO as the project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). The EA for this project will document findings on the impacts on historic properties and summarize the status of consultations under section 106.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If the Commission issues the EA for an allotted public comment period, a *Notice of Availability* of the EA will be sent to the environmental mailing list and will provide instructions to access the electronic document on the FERC's website (*www.ferc.gov*). If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please return the attached ''Mailing List Update Form'' appendix 2.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number in the ''Docket Number'' field, excluding the last three digits (*i.e.,* CP19–31). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Public sessions or site visits will be posted on the Commission's calendar

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE, Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[2] For instructions on connecting to eLibrary, refer to the last page of this notice.

[3] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

[4] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: February 8, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–02346 Filed 2–13–19; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2018–0010; FRL–9987–70]

Pesticide Emergency Exemptions; Agency Decisions and State and Federal Agency Crisis Declarations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted emergency exemptions under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for use of pesticides as listed in this notice. The exemptions were granted during the period of April 1, 2018 to September 30, 2018 to control unforeseen pest outbreaks.

FOR FURTHER INFORMATION CONTACT: Michael L. Goodis, Director Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

If you have any questions regarding the applicability of this action to a particular entity, consult the person listed at the end of the emergency exemption.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2018–0010, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

II. Background

EPA has granted emergency exemptions to the following State and Federal agencies. The emergency exemptions may take the following form: Crisis, public health, quarantine, or specific. EPA has also listed denied emergency exemption requests in this notice.

Under FIFRA section 18 (7 U.S.C. 136p), EPA can authorize the use of a pesticide when emergency conditions exist. Authorizations (commonly called emergency exemptions) are granted to State and Federal agencies and are of four types:

1. A ''specific exemption'' authorizes use of a pesticide against specific pests on a limited acreage in a particular State. Most emergency exemptions are specific exemptions.

2. ''Quarantine'' and ''public health'' exemptions are emergency exemptions issued for quarantine or public health purposes. These are rarely requested.

3. A ''crisis exemption'' is initiated by a State or Federal agency (and is confirmed by EPA) when there is insufficient time to request and obtain EPA permission for use of a pesticide in an emergency.

EPA may deny an emergency exemption: If the State or Federal agency cannot demonstrate that an emergency exists, if the use poses unacceptable risks to the environment, or if EPA cannot reach a conclusion that the proposed pesticide use is likely to result in ''a reasonable certainty of no harm'' to human health, including exposure of residues of the pesticide to infants and children.

If the emergency use of the pesticide on a food or feed commodity would result in pesticide chemical residues, EPA establishes a time-limited tolerance meeting the ''reasonable certainty of no harm standard'' of the Federal Food, Drug, and Cosmetic Act (FFDCA).

In this document: EPA identifies the State or Federal agency granted the exemption, the type of exemption, the pesticide authorized and the pests, the crop or use for which authorized, number of acres (if applicable), and the duration of the exemption. EPA also gives the **Federal Register** citation for the time-limited tolerance, if any.

III. Emergency Exemptions

A. U. S. States and Territories

Alabama

Department of Agriculture

Specific exemption: EPA authorized the use of flupyradifurone on a maximum of 500 acres of sweet sorghum (forage and syrup) to control sugarcane aphid. A time-limited tolerance in connection with this action has been established in 40 CFR 180.679(b). Effective May 14, 2018 to November 15, 2018.

Arizona

Department of Agriculture

Specific exemption: EPA authorized the use of sulfoxaflor on a maximum of 26,000 acres of sorghum (grain and forage) to control sugarcane aphid. A time-limited tolerance in connection with this action has been established in 40 CFR 180.668(b); Effective April 30, 2018 to November 30, 2018.

EPA authorized the use of sulfoxaflor on a maximum of 150,000 acres of cotton to control tarnished plant bug *(Lygus spp.).* A permanent tolerance in connection with an earlier registration action has been established in 40 CFR 180.668(a). Effective June 1, 2018 to October 31, 2018.

California

Department of Pesticide Regulation

Specific exemption: EPA authorized the use of sulfoxaflor on a maximum of 270,000 acres of cotton to control tarnished plant bug *(Lygus spp.).* A permanent tolerance in connection with an earlier registration action has been established in 40 CFR 180.668(a). Effective May 15, 2018 to October 31, 2018.

EPA authorized the use of methoxyfenozide on a maximum of 100,000 acres of rice to control armyworm (*Mythimna unipuncta*) and Western Yellowstriped Armyworm (*Spodoptera praefica*). A time-limited tolerance in connection with this action has been established in 40 CFR

180.544(b). Effective June 21, 2018 to October 4, 2018.

EPA authorized the use of bifenthrin on a maximum of 18,000 acres of pomegranates to control leaf-footed plant bugs. A time-limited tolerance in connection with this action has been established in 40 CFR 180.442(b); Effective August 21, 2018 to December 31, 2018.

Delaware

Department of Agriculture

Specific exemptions: EPA authorized the use of bifenthrin on a maximum of 415 acres of apple, peach, and nectarine to control the brown marmorated stinkbug. Time-limited tolerances in connection with past actions were established in 40 CFR 180.442(b); Effective May 11, 2018 to October 15, 2018.

EPA authorized the use of dinotefuran on a maximum of 415 acres of pome and stone fruit to control the brown marmorated stinkbug. Time-limited tolerances in connection with past actions were established in 40 CFR 180.603(b); Effective June 8, 2018 to October 15, 2018. The request was granted because an emergency condition exists with significant economic losses expected. Since this request proposed a use for which an emergency exemption has been requested for 5 or more previous years (and supported by the Interregional Research Project Number 4 (IR–4) program) and a registration application or tolerance petition has not been submitted to EPA, in accordance with the requirements at 40 CFR 166.24, a notice of receipt published in the **Federal Register** on May 7, 2018 (83 FR 20070) (FRL–9979–46) with the public comment period closing on May 22, 2018.

Georgia

Department of Agriculture

Specific exemption: EPA authorized the use of flupyradifurone on a maximum of 50,000 acres of sweet sorghum (forage and syrup) to control sugarcane aphid. A time-limited tolerance in connection with this action has been established in 40 CFR 180.679(b). Effective May 1, 2018 to December 1, 2018.

Illinois

Department of Agriculture

Specific exemption: EPA authorized the use of sulfoxaflor on a maximum of 23,000 acres of sorghum (grain and forage) to control sugarcane aphid. A time-limited tolerance in connection with this action has been established in 40 CFR 180.668(b); Effective July 17, 2018 to November 30, 2018.

Indiana

Office of the Indiana State Chemist

Specific exemption: EPA authorized the use of pyridate on a maximum of 11,200 acres of mint for postemergence control of herbicide-resistant annual weeds such as redroot pigweed, *Armaranthus retroflexus* and other broadleaf weeds. Tolerances in connection with an earlier registration action are established in 40 CFR 180.462(a). Effective May 18, 2018 to August 31, 2018.

Kentucky

Department of Agriculture

Specific exemption: EPA authorized the use of flupyradifurone on a maximum of 1,500 acres of sweet sorghum (forage and syrup) to control sugarcane aphid. A time-limited tolerance in connection with this action has been established in 40 CFR 180.679(b). Effective May 8, 2018 to November 15, 2018.

Maryland

Department of Agriculture

Specific exemptions: EPA authorized the use of bifenthrin on a maximum of 3,570 acres of apple, peach, and nectarine to control the brown marmorated stinkbug. Time-limited tolerances in connection with past actions were established in 40 CFR 180.442(b); Effective May 11, 2018 to October 15, 2018.

EPA authorized the use of dinotefuran on a maximum of 3,730 acres of pome and stone fruit to control the brown marmorated stinkbug. Time-limited tolerances in connection with past actions were established in 40 CFR 180.603(b); Effective June 8, 2018 to October 15, 2018. Since this request proposed a use for which an emergency exemption has been requested for 5 or more previous years (and supported by the IR–4 program) and a registration application or tolerance petition has not been submitted to EPA, in accordance with the requirements at 40 CFR 166.24, a notice of receipt published in the **Federal Register** on May 7, 2018 (83 FR 20070) (FRL–9979–46) with the public comment period closing on May 22, 2018.

Michigan

Department of Agriculture and Rural Development

Specific exemption: EPA authorized the use of pyridate on a maximum of 1,250 acres of mint for postemergence control of herbicide-resistant annual weeds such as redroot pigweed, *Armaranthus retroflexus* and other broadleaf weeds. Tolerances in connection with an earlier registration action are established in 40 CFR 180.462(a). Effective May 18, 2018 to August 31, 2018.

EPA authorized the use of dinotefuran on a maximum of 35,280 acres of pome and stone fruit to control the brown marmorated stinkbug. Time-limited tolerances in connection with past actions were established in 40 CFR 180.603(b); Effective June 8, 2018 to October 15, 2018. Since this request proposed a use for which an emergency exemption has been requested for 5 or more previous years (and supported by the IR–4 program) and a registration application or tolerance petition has not been submitted to EPA, in accordance with the requirements at 40 CFR 166.24, a notice of receipt published in the **Federal Register** on May 7, 2018 (83 FR 20070) (FRL–9979–46) with the public comment period closing on May 22, 2018.

Montana

Department of Agriculture

Specific exemption: EPA authorized the use of indaziflam in rangeland, pastures, and conservation reserve programs on a maximum of 55,000 acres to control Medusahead and Ventenata. Time-limited tolerances in connection with this action have been established in 40 CFR 180.653(b); Effective August 1, 2018 to August 1, 2019.

New Jersey

Department of Environmental Protection

Specific exemptions: EPA authorized the use of dinotefuran on a maximum of 8,100 acres of pome and stone fruit to control the brown marmorated stinkbug. Time-limited tolerances in connection with past actions were established in 40 CFR 180.603(b); Effective June 8, 2018 to October 15, 2018. Since this request proposed a use for which an emergency exemption has been requested for 5 or more previous years (and supported by the IR–4 program) and a registration application or tolerance petition has not been submitted to EPA, in accordance with the requirements at 40 CFR 166.24, a notice of receipt published in the **Federal Register** on May 7, 2018 (83 FR 20070) (FRL–9979–46) with the public comment period closing on May 22, 2018.

EPA authorized the use of bifenthrin on a maximum of 8,200 acres of apple, peach, and nectarine to control the brown marmorated stinkbug. Time-limited tolerances in connection with

past actions were established in 40 CFR 180.442(b); Effective June 26, 2018 to October 15, 2018.

New Mexico

Department of Agriculture

Specific exemption: EPA authorized the use of sulfoxaflor on a maximum of 140,000 acres of sorghum (grain and forage) to control sugarcane aphid. A time-limited tolerance in connection with this action has been established in 40 CFR 180.668(b); Effective May 10, 2018 to November 30, 2018.

New York

Department of Environmental Conservation

Specific exemptions: EPA authorized the use of bifenthrin on a maximum of 7,321 acres of apple, peach, and nectarine to control the brown marmorated stinkbug. Time-limited tolerances in connection with past actions were established in 40 CFR 180.442(b); Effective July 6, 2018 to October 15, 2018.

North Carolina

Department of Agriculture and Consumer Services

Specific exemptions: EPA authorized the use of dinotefuran on a maximum of 4,000 acres of pome and stone fruit to control the brown marmorated stinkbug. Time-limited tolerances in connection with past actions were established in 40 CFR 180.603(b); Effective June 8, 2018 to October 15, 2018. Since this request proposed a use for which an emergency exemption has been requested for 5 or more previous years (and supported by the IR–4 program) and a registration application or tolerance petition has not been submitted to EPA, in accordance with the requirements at 40 CFR 166.24, a notice of receipt published in the **Federal Register** on May 7, 2018 (83 FR 20070) (FRL–9979–46) with the public comment period closing on May 22, 2018.

EPA authorized the use of sulfoxaflor on a maximum of 425,000 acres of cotton to control tarnished plant bug *(Lygus spp.).* A permanent tolerance in connection with an earlier registration action has been established in 40 CFR 180.668(a). Effective June 15, 2018 to October 30, 2018.

EPA authorized the use of bifenthrin on a maximum of 3,000 acres of apple, peach, and nectarine to control the brown marmorated stinkbug. Time-limited tolerances in connection with past actions were established in 40 CFR 180.442(b); Effective June 26, 2018 to October 15, 2018.

Specific exemption: EPA authorized the use of flupyradifurone on a maximum of 750 acres of sweet sorghum (forage and syrup) to control sugarcane aphid. A time-limited tolerance in connection with this action has been established in 40 CFR 166.20(b). Effective July 3, 2018 to November 15, 2018.

Oklahoma

Department of Agriculture

Specific exemption: EPA authorized the use of sulfoxaflor on a maximum of 300,000 acres of sorghum (grain and forage) to control sugarcane aphid. A time-limited tolerance in connection with this action has been established in 40 CFR 180.668(b); Effective April 10, 2018 to November 30, 2018.

EPA authorized the use of sulfoxaflor on a maximum of 700,000 acres of cotton to control tarnished plant bug *(Lygus spp.).* A permanent tolerance in connection with an earlier registration action has been established in 40 CFR 180.668(a). Effective May 29, 2018 to October 30, 2018.

Oregon

Department of Agriculture

Crisis exemption: EPA authorized the use of sulfoxaflor on a maximum of 7,000 acres of alfalfa grown for seed to control lygus bugs; Effective July 31, 2018 to August 14, 2018.

Pennsylvania

Department of Agriculture

Specific exemptions: EPA authorized the use of bifenthrin on a maximum of 24,974 acres of apple, peach, and nectarine to control the brown marmorated stinkbug. Time-limited tolerances in connection with past actions were established in 40 CFR 180.442(b); Effective May 11, 2018 to October 15, 2018.

EPA authorized the use of dinotefuran on a maximum of 24,974 acres of pome and stone fruit to control the brown marmorated stinkbug. Time-limited tolerances in connection with past actions were established in 40 CFR 180.603(b); Effective June 8, 2018 to October 15, 2018. Since this request proposed a use for which an emergency exemption has been requested for 5 or more previous years (and supported by the IR–4 program) and a registration application or tolerance petition has not been submitted to EPA, in accordance with the requirements at 40 CFR 166.24, a notice of receipt published in the **Federal Register** on May 7, 2018 (83 FR 20070) (FRL–9979–46) with the public comment period closing on May 22, 2018.

South Carolina

Department of Pesticide Regulation

Specific exemption: EPA authorized the use of sulfoxaflor on a maximum of 19,600 acres of sorghum (grain and forage) to control sugarcane aphid. A time-limited tolerance in connection with this action has been established in 40 CFR 180.668(b); Effective July 3, 2018 to November 30, 2018.

Texas

Department of Agriculture

Specific exemption: EPA authorized the use of clothianidin on a maximum of 4,000 acres of immature citrus trees to manage the transmission of Huanglongbing (HLB) disease vectored by the Asian citrus psyllid. A time-limited tolerance in connection with this action was established in 40 CFR 180.668(b); Effective May 1, 2018 to May 1, 2019.

Utah

Department of Agriculture

Specific exemption: EPA authorized the use of indaziflam in rangeland, pastures, and conservation reserve programs on a maximum of 10,000 acres to control Medusahead and Ventenata. Time-limited tolerances in connection with this action have been established in 40 CFR 180.653(b); Effective June 10, 2018 to June 9, 2019.

Virginia

Department of Agriculture and Consumer Services

Specific exemptions: EPA authorized the use of sulfoxaflor on a maximum of 16,591 acres of sorghum (grain and forage) to control sugarcane aphid. A time-limited tolerance in connection with this action has been established in 40 CFR 180.668(b); Effective April 4, 2018 to November 30, 2018.

EPA authorized the use of bifenthrin on a maximum of 29,000 acres of apple, peach, and nectarine to control the brown marmorated stinkbug. Time-limited tolerances in connection with past actions were established in 40 CFR 180.442(b); Effective May 11, 2018 to October 15, 2018.

EPA authorized the use of dinotefuran on a maximum of 29,000 acres of pome and stone fruit to control the brown marmorated stinkbug. Time-limited tolerances in connection with past actions were established in 40 CFR 180.603(b); Effective June 8, 2018 to October 15, 2018. Since this request proposed a use for which an emergency exemption has been requested for 5 or more previous years (and supported by the IR–4 program) and a registration

application or tolerance petition has not been submitted to EPA, in accordance with the requirements at 40 CFR 166.24, a notice of receipt published in the **Federal Register** on May 7, 2018 (83 FR 20070) (FRL–9979–46) with the public comment period closing on May 22, 2018.

Washington

Department of Agriculture

Specific exemption: EPA authorized the use of lambda-cyhalothrin on a maximum of 7,000 acres of asparagus to control the European asparagus aphid. Due to the long (120-day) pre-harvest interval required and no detectable residues expected, time-limited tolerances were not required; Effective July 20, 2018 to October 30, 2018. The request was granted because an emergency condition exists with significant economic losses expected. Since this request proposed a use for which an emergency exemption has been requested for 5 or more previous years (and supported by the IR–4 program) and a registration application or tolerance petition has not been submitted to EPA, in accordance with the requirements at 40 CFR 166.24, a notice of receipt published in the **Federal Register** on June 28, 2018 (83 FR 30443) (FRL–9979–46) with the public comment period closing on July 13, 2018.

Wisconsin

Department of Agriculture

Specific exemption: EPA authorized the use of pyridate on a maximum of 3,100 acres of mint for postemergence control of herbicide-resistant annual weeds such as redroot pigweed, *Armaranthus retroflexus* and other broadleaf weeds. Tolerances in connection with an earlier registration action are established in 40 CFR 180.462(a). Effective May 18, 2018 to August 31, 2018.

West Virginia

Department of Agriculture

Specific exemptions: EPA authorized the use of dinotefuran on a maximum of 5,986 acres of pome and stone fruit to control the brown marmorated stinkbug. Time-limited tolerances in connection with past actions were established in 40 CFR 180.603(b); Effective June 8, 2018 to October 15, 2018. Since this request proposed a use for which an emergency exemption has been requested for 5 or more previous years (and supported by the IR–4 program) and a registration application or tolerance petition has not been submitted to EPA, in accordance with the requirements at 40 CFR 166.24, a notice of receipt published in the **Federal Register** on May 7, 2018 (83 FR 20070) (FRL–9979–46) with the public comment period closing on May 22, 2018.

EPA authorized the use of bifenthrin on a maximum of 5,986 acres of apple, peach, and nectarine to control the brown marmorated stinkbug. Time-limited tolerances in connection with past actions were established in 40 CFR 180.442(b); Effective June 26, 2018 to October 15, 2018.

Wyoming

Department of Agriculture

Specific exemption: EPA authorized the use of indaziflam on a maximum of 300,000 acres of rangeland, pastures, and areas subject to the conservation reserve program to control Medusahead and Ventenata. Time-limited tolerances in connection with this action have been established in 40 CFR 180.653(b); Effective September 14, 2019 to September 14, 2019.

B. Federal Departments and Agencies

Agriculture Department

Animal and Plant Health Inspector Service

Quarantine Exemptions: EPA authorized the use of acetic acid on nonporous surfaces to decontaminate from foot and mouth disease virus; Effective April 19, 2018 to April 19, 2021.

EPA authorized the use of sodium hypochlorite on porous and nonporous surfaces to decontaminate from viruses of foot and mouth disease, classical swine fever, and African swine fever; Effective September 17, 2018 to September 17, 2021.

EPA authorized the use of sodium hydroxide on nonporous surfaces to control prions; Effective September 25, 2018 to September 25, 2021.

EPA authorized the use of sodium hypochlorite on nonporous surfaces to control prions; Effective September 25, 2018 to September 25, 2021.

National Aeronautics and Space Administration

Specific exemption. EPA authorized use of ortho-phthalaldehyde, immobilized to a porous resin, to treat the International Space Station (ISS) internal active thermal control system (IATCS) coolant for control of aerobic and microaerophilic water bacteria and unidentified gram-negative rods. Effective May 31, 2018 to May 31, 2019. This request was granted because without this use, the ISS would have no means of controlling microorganisms in the IATCS because there are no registered alternatives available which meet the required criteria. Since this request proposed a use of a new (unregistered) chemical, in accordance with the requirements at 40 CFR 166.24, a notice of receipt published in the **Federal Register** on June 14, 2018 (83 FR 27766) (FRL–9978–55), with the public comment period eliminated since the time available for a decision on the application required it.

Authority: 7 U.S.C. 136 *et seq.*

Dated: December 21, 2018.

Donna S. Davis,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2019–02354 Filed 2–13–19; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2018–0014; FRL–9987–92]

Product Cancellation Order for Certain Pesticide Registrations and Amendments To Terminate Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's order for the cancellations and amendments to terminate uses, voluntarily requested by the registrants and accepted by the Agency, of the products listed in Table 1 and Table 2 of Unit II, pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This cancellation order follows an October 17, 2018 **Federal Register** Notice of Receipt of Requests from the registrants listed in Table 3 of Unit II to voluntarily cancel and amend to terminate uses of these product registrations. In the October 17, 2018 notice, EPA indicated that it would issue an order implementing the cancellations and amendments to terminate uses, unless the Agency received substantive comments within the 30-day comment period that would merit its further review of these requests, or unless the registrants withdrew their requests. The Agency did not receive any comments on the notice. Further, the registrants did not withdraw their requests. Accordingly, EPA hereby issues in this notice a cancellation order granting the requested cancellations and amendments to terminate uses. Any distribution, sale, or use of the products subject to this cancellation order is permitted only in accordance with the terms of this order, including any existing stocks provisions.

DATES: The cancellations and amendments are effective February 14, 2019.

FOR FURTHER INFORMATION CONTACT: Christopher Green, Information Technology and Resources Management Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (703) 347–0367; email address: *green.christopher@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2018–0014, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

II. What action is the agency taking?

This notice announces the cancellations and amendments to terminate uses, as requested by registrants, of products registered under FIFRA section 3 (7 U.S.C. 136a). These registrations are listed in sequence by registration number in Tables 1 and 2 of this unit.

TABLE 1—PRODUCT CANCELLATIONS

Registration No.	Company No.	Product name	Active ingredients
100–974	100	Platinum Ridomil Gold	Thiamethoxam & Metalaxyl-M.
100–1149	100	CGA–329351 138 ES	Metalaxyl-M.
100–1184	100	Cruiser XL Insecticide and Fungicide Prepack	Metalaxyl-M; Fludioxonil & Thiamethoxam.
100–1208	100	Cruiser Extreme	Azoxystrobin; Metalaxyl-M; Fludioxonil & Thiamethoxam.
100–1284	100	Dynasty Extreme	Myclobutanil; Metalaxyl-M; Fludioxonil & Azoxystrobin.
100–1335	100	Difenoconazole/Mefenoxam FS	Difenoconazole & Metalaxyl-M.
100–1413	100	Ariel	Metalaxyl-M.
352–754	352	Dupont Imazapyr 75XP Herbicide	Imazapyr.
432–1578	432	Lineage Clearstand	Metsulfuron & Imazapyr.
499–373	499	Whitmire PT 289 Orthense	Acephate.
1381–226	1381	Imidacloprid 60% WSP ORN Insecticide	Imidacloprid.
2217–759	2217	Embark 2–S Plant Growth Regulator	Mefluidide, diethanolamine salt.
2217–766	2217	Embark 2–L Plant Growth Regulator	N-(2,4-Dimethyl-5-(((trifluoromethyl)sulfonyl)amino)phenyl) acetamide, potassium salt.
2217–767	2217	Mefluidide 2–S Concentrate	Mefluidide, diethanolamine salt.
2217–768	2217	Embark E–Z–TU–USE Plant Grown Regulator	Mefluidide, diethanolamine salt.
2217–802	2217	EH 1135 PGR	Imazethapyr, ammonium salt; Imazapyr & Mefluidide, diethanolamine salt.
55146–81	55146	Flouronil Fungicide	Chlorothalonil & Metalaxyl-M.
65331–6	65331	Amitraz Technical	Amitraz.
66222–135	66222	Thidiazuron 50 WSB	Thidiazuron.
66330–24	66330	Captan 4 Flowable	Captan.
66330–26	66330	Captan 50 WP	Captan.
66330–27	66330	Captan Garden Spray	Captan.
66330–209	66330	Captan 80W	Captan.
66330–235	66330	Captan 4 Flowable	Captan.
66330–238	66330	Captan 4 Flowable Seed Protectant	Captan.
66330–239	66330	Captec 4L Captan Flowable Fungicide	Captan.
66330–242	66330	Mepiquat Chloride Liquid Concentrate	Mepiquat chloride.
66330–243	66330	Mepichlor Pill	Mepiquat chloride.
66330–280	66330	Mepplus Concentrate	Mepiquat chloride & Bacillus cereus strain BP01.
66330–285	66330	Mepplus Pill	Mepiquat chloride & Bacillus cereus strain BP01.
66330–346	66330	Pix Concentrate Plant Regulator	Mepiquat chloride.
66330–348	66330	MC–6	Mepiquat chloride.
66330–393	66330	ARY 0494–006	Bacillus cereus strain BP01 & Mepiquat chloride.
CO–080004	400	Enhance	Captan & Carboxin.
CO–090006	5481	Orthene Turf, Tree & Ornamental WSP	Acephate.
FL–050004	70506	Surflan as Specialty Herbicide	Oryzalin.
ME–160002	71512	Omega 500F	Fluazinam.
OR–040033	10163	Onager 1E	Hexythiazox.
OR–120018	59639	Valor Herbicide	Flumioxazin.
WA–040021	228	Riverdale Aquaneat Aquatic Herbicide	Glyphosate-isopropylammonium.
WI–130001	100	Dual Magnum Herbicide	S-Metolachlor.
WY–070002	56228	DRC–1339 Concentrate Staging Label	Starlicide.

TABLE 2—PRODUCT REGISTRATION AMENDMENTS TO TERMINATE USES

Registration No.	Company No.	Product name	Active ingredients	Uses to be terminated
11678–55	11678	Magnate Technical	Imazalil	Seed treatment uses.
43813–4	43813	Fungaflor 75 SP	Imazalil sulphate	Seed treatment uses.
66222–1	66222	Captan 50–WP	Captan	Turf.
66330–209	66330	Captan 80W	Captan	Turf.
66330–234	66330	Captan 50 Wettable Powder	Captan	Turf.
66330–239	66330	Captec 4L Captan Flowable Fungicide.	Captan	Turf.

Table 3 of this unit includes the names and addresses of record for all registrants of the products in Tables 1 and 2 of this unit, in sequence by EPA company number. This number corresponds to the first part of the EPA registration numbers of the products listed above.

TABLE 3—REGISTRANTS OF CANCELLED AND AMENDED PRODUCTS

EPA company No.	Company name and address
100	Syngenta Crop Protection, LLC, 410 Swing Road, P.O. Box 18300, Greensboro, NC 27419–8300.
228	Nufarm Americas, Inc., 4020 Aerial Center Pkwy., Ste. 101, Morrisville, NC 27560.
352	E. I. Du Pont De Nemours and Company, Attn: Manager, US Registration, DuPont Crop Protection, Chestnut Run Plaza (CRP 720/2E5), 974 Centre Rd., Wilmington, DE 19805.
400	MacDermid Agricultural Solutions, Inc. C/O Arysta LifeScience North America, LLC, 15401 Weston Parkway, Suite 150, Cary, NC 27513.
432	Bayer Environmental Science, A Division of Bayer CropScience, LP 2 T. W. Alexander Drive, Research Triangle Park, NC 27709.
499	BASF Corporation, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, NC 27709–3528.
1381	Winfield Solutions, LLC, P.O. Box 64589, St. Paul, MN 55164–0589.
2217	PBI/Gordon Corp., 1217 West 12th Street, P.O. Box 014090, Kansas City, MO 64101–0090.
5481	AMVAC Chemical Corporation, 4695 MacArthur Court, Suite 1200, Newport Beach, CA 92660–1706.
10163	Gowan Company, P.O. Box 5569, Yuma, AZ 85366.
11678	ADAMA Makhteshim LTD., Agent Name: Makhteshim-Agan of North America, Inc., D/B/A ADAMA 3120 Highwoods Blvd., Suite 100, Raleigh, NC 27604.
43813	Janssen PMP, A Division of Janssen Pharmaceutica NV 1125 Trenton-Harbourton Rd., Titusville, NJ 08560–0200.
55146	Nufarm Americas, Inc., AGT Division, 4020 Aerial Center Pkwy., Suite 101, Morrisville, NC 27560.
56228	U.S. Department of Agriculture, Animal and Plant Health Inspection Service, 4700 River Road, Unit 149, Riverdale, MD 20737.
59639	Valent U.S.A. LLC, 1600 Riviera Avenue, Suite 200, Walnut Creek, CA 94596–8025.
65331	Merial, Inc., 3239 Satellite Blvd., Duluth, GA 30096.
66222	Makhteshim Agan of North America, Inc., D/B/A Adama, 3120 Highwoods Blvd., Suite 100, Raleigh, NC 27604.
66330	Arysta LifeScience North America, LLC, 15401 Weston Parkway, Suite 150, Cary, NC 27513.
70506	United Phosphorus, Inc. 630 Freedom Business Center, Suite 402, King of Prussia, PA 19406.
71512	ISK Biosciences Corporation, 7470 Auburn Road, Suite A, Concord, OH 44077.

III. Summary of Public Comments Received and Agency Response to Comments

During the public comment period provided, EPA received no comments in response to the October 17, 2018 **Federal Register** notice announcing the Agency's receipt of the requests for voluntary cancellations and amendments to terminate uses of products listed in Tables 1 and 2 of Unit II.

IV. Cancellation Order

Pursuant to FIFRA section 6(f) (7 U.S.C. 136d(f)(1)), EPA hereby approves the requested cancellations and amendments to terminate uses of the registrations identified in Tables 1 and 2 of Unit II. Accordingly, the Agency hereby orders that the product registrations identified in Tables 1 and 2 of Unit II are canceled and amended to terminate the affected uses. The effective date of the cancellations that are subject of this notice is February 14, 2019. Any distribution, sale, or use of existing stocks of the products identified in Tables 1 and 2 of Unit II in a manner inconsistent with any of the provisions for disposition of existing stocks set forth in Unit VI will be a violation of FIFRA.

V. What is the agency's authority for taking this action?

Section 6(f)(1) of FIFRA (7 U.S.C. 136d(f)(1)) provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the EPA Administrator may approve such a request. The notice of receipt for this action was published for comment in the **Federal Register** of October 17, 2018 (83 FR 52444) (FRL–9983–91). The comment period closed on November 16, 2018.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the action. The existing stocks provision for the products subject to this order is as follows.

For voluntary cancellations, the registrants may continue to sell and distribute existing stocks of products listed in Table 1 until February 14, 2020, which is 1 year after publication

of this cancellation order in the **Federal Register**. Thereafter, the registrants are prohibited from selling or distributing products listed in Table 1 of Unit II, except for export in accordance with FIFRA section 17 (7 U.S.C. 136o) or for proper disposal.

Now that EPA has approved product labels reflecting the requested amendments to terminate uses, registrants are permitted to sell or distribute products listed in Table 2 of Unit II under the previously approved labeling until August 14, 2020, a period of 18 months after publication of the cancellation order in this **Federal Register**, unless other restrictions have been imposed. Thereafter, registrants will be prohibited from selling or distributing the products whose labels include the terminated uses identified in Table 2 of Unit II, except for export consistent with FIFRA section 17 or for proper disposal.

Persons other than the registrant may sell, distribute, or use existing stocks of canceled products and products whose labels include the terminated uses until supplies are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled products and terminated uses.

Authority: 7 U.S.C. 136 *et seq.*

Dated: December 18, 2018.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. 2019–02385 Filed 2–13–19; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0179]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before April 15, 2019. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email: *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0179.

Title: Section 73.1590, Equipment Performance Measurements.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; not-for-profit institutions.

Number of Respondents and Responses: 13,049 respondents and 13,049 responses.

Estimated Time per Response: 0.5–18 hours.

Frequency of Response: Recordkeeping requirement.

Total Annual Burden: 12,335 hours.

Total Annual Cost: None.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Section 154(i) of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment: No impact(s).

Needs and Uses: The information collection requirements contained in 47 CFR 73.1590(d) require licensees of AM, FM and TV stations to make audio and video equipment performance measurements for each main transmitter. These measurements and a description of the equipment and procedures used in making the measurements must be kept on file at the transmitter or remote control point for two years. In addition, this information must be made available to the FCC upon request.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2019–02227 Filed 2–13–19; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–XXXX]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the

PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before April 15, 2019. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email: *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–XXXX.

Title: Incumbent 39 GHz Licensee Short-Form Application.

Form Number: FCC Form 175–A.

Type of Review: New information collection.

Respondents: Business or other for-profit entities, not-for-profit institutions, and state, local or tribal governments.

Estimated Number of Respondents and Responses: 16 respondents and 16 responses.

Estimated Time per Response: 30 minutes.

Frequency of Response: One-time reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for the currently approved information collection is contained in sections 154, 254, and 303(r) of the Communications Act, as amended, 47 U.S.C. 4, 254, 303(r).

Estimated Total Annual Burden: 8 hours.

Total Annual Costs: None.

Nature and Extent of Confidentiality: Information collected pursuant this information collection will be made available for public inspection, and the Commission is not requesting that respondents submit confidential information in response to this information collection. To the extent a respondent seeks to have information collected pursuant to this information collection withheld from public inspection, the respondent may request confidential treatment of such information pursuant to section 0.459 of the Commission's rules, 47 CFR 0.459.

Privacy Act Impact Assessment: No impact(s).

Needs and Uses: A request for approval of this new information collection will be submitted to the Office of Management and Budget (OMB) after this 60-day comment period in order to obtain the full three-year clearance from OMB.

In its 2016 *Spectrum Frontiers Report and Order* (FCC 16–89), the Commission adopted Upper Microwave Flexible Use Service (UMFUS) rules for the 28 GHz, Upper 37 GHz, and 39 GHz bands to make available millimeter wave spectrum for 5G. In its 2017 *Spectrum Frontiers Second Report and Order* (FCC 17–152), the Commission expanded the UMFUS rules to cover the 24 GHz and 47 GHz bands. In its December 2018 *Fourth Report and Order* (FCC 18–180), the Commission established an incentive auction that promotes the flexible-use wireless service rules that the Commission has adopted for the Upper 37 GHz, 39 GHz, and 47 GHz bands and, among other things, adopted modified band plans for these bands.

There are currently a number of existing licenses in the 39 GHz band that do not fit geographically into the Commission's new 39 GHz band plan, resulting in ''encumbered'' licenses in this band. The Commission will use the incentive auction process to resolve the difficulties presented by these encumbrances and the need for existing 39 GHz licenses to be transitioned efficiently to the new band plan and possibly to new service areas. Pursuant to the reconfiguration process adopted in the *Fourth Report and Order,* prior to the incentive auction, the Commission will offer each incumbent 39 GHz licensee a reconfiguration of its existing 39 GHz licenses that conforms more closely with the Commission's new band plan and service areas. Each incumbent can then choose to commit to (1) have its existing 39 GHz licenses modified based on the Commission's reconfiguration proposal; or (2) have its licenses modified based on an alternative reconfiguration proposed by the incumbent (provided it satisfies certain specified conditions); or (3) relinquish its existing spectrum usage rights in exchange for an incentive payment. An incumbent 39 GHz licensee will submit contact and related information and certifications on FCC Form 175–A which will be used by the Commission to enable the incumbent licensee to make its commitment to either accept modification of its 39 GHz spectrum holdings (either as proposed by the Commission or an acceptable alternate) or to relinquish its existing spectrum usage rights in exchange for an incentive payment.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2019–02294 Filed 2–13–19; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–XXXX]

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before March 18, 2019. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov;* and to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole

Ongele at (202) 418–2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page *http://www.reginfo.gov/public/do/PRAMain*, (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection.

Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

OMB Control Number: 3060–XXXX.

Title: Creation of Interstitial 12.5 Kilohertz Channels in the 800 MHz Band Between 809–817/854–862 MHz.

Form Number: N/A.

Type of Review: New information collection.

Respondents: Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents and Responses: 700 respondents, 350 responses.

Estimated Time per Response: 2 hours.

Frequency of Response: One-time reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this collection is contained in 47 U.S.C. 151, 154, 301, 303, and 332 of the Communications Act of 1934.

Total Annual Burden: 700 hours.

Total Annual Cost: No Cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for applicants filing applications to license channels in the 809–817/854–862 MHz band segment (800 MHz Mid-Band) to include confidential information with their application. Nonetheless, there is a need for confidentiality with respect to all applications filed with the Commission through its Universal Licensing System (ULS). Although ULS stores all information pertaining to the individual license via an FCC Registration Number (FRN), confidential information is accessible only by persons or entities that hold the password for each account, and the Commission's licensing staff. Information on private land mobile radio licensees is maintained in the Commission's system of records, FCC/WTB–1, ''Wireless Services Licensing Records.'' The licensee records will be publicly available and routinely used in accordance with subsection (b) of the Privacy Act. TIN Numbers and material which is afforded confidential treatment pursuant to a request made under 47 CFR 0.459 will not be available for Public inspection. Any personally identifiable information (PII) that individual applicants provide is covered by a system of records, FCC/WTB–1, ''Wireless Services Licensing Records,'' and these and all other records may be disclosed pursuant to the Routine Uses as stated in this system of records notice.

Needs and Uses: This collection will be submitted as a new collection after this 60-day comment period to the Office of Management and Budget (OMB) in order to obtain the full three-year clearance. Section 90.621(d)(4) adopted in the Commission's Report and Order FCC 18–143 requires an applicant to include a letter of concurrence from an incumbent licensee if the applicant files an application which causes contour overlap under a forward analysis or receives contour overlap under a reciprocal analysis when the applicant seeks to license channels in the 800 MHz Mid-Band. In the case of the forward analysis, the incumbent licensee must agree in its concurrence letter to accept any interference that occurs as a result of the contour overlap. In the case of the reciprocal analysis, the incumbent licensee must state in its concurrence letter that it does not object to the applicant receiving contour overlap from the incumbent's facility. The purpose of requiring applicants to obtain letters of concurrence if their application causes contour overlap under a forward analysis or receives contour overlap under a reciprocal analysis is to ensure incumbents in the 800 MHz Mid-Band are aware of the contour overlap before an application is granted.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2019–02228 Filed 2–13–19; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Open Commission Meeting, Thursday, February 14, 2019

February 7, 2019.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, February 14, 2019 which is scheduled to commence at 10:30 a.m. in Room TW–C305, at 445 12th Street SW, Washington, DC.

Item No.	Bureau	Subject
1	Wireline Competition	*Title:* Connect America Fund (WC Docket No. 10–90). *Summary:* The Commission will consider a Report and Order establishing a schedule to end Connect America Fund (CAF) Phase I support in price cap areas where winning bidders in the CAF Phase II auction will begin receiving Phase II support and in areas that were not eligible for the auction, while providing interim support in areas that did not receive any bids.
2	Media	*Title:* Reexamination of the Comparative Standards and Procedures for Licensing Noncommercial Educational Broadcast Stations and Low Power FM Stations (MB Docket No. 19–3). *Summary:* The Commission will consider a Notice of Proposed Rulemaking that proposes revisions to the Commission's NCE and LPFM comparative processing and licensing rules.

Item No.	Bureau	Subject
3	Media	*Title:* Elimination of Obligation to File Broadcast Mid-Term Report (Form 397) Under Section 73.2080(f)(2) (MB Docket No. 18–23); Modernization of Media Regulation Initiative (MB Docket No. 17–105). *Summary:* The Commission will consider a Report and Order eliminating the requirement in Section 73.2080(f)(2) of the Commission's rules that certain broadcast television and radio stations file the Broadcast Mid-Term Report (Form 397).
4	Consumer & Governmental Affairs.	*Title:* Misuse of Internet Protocol (IP) Captioned Telephone Services (CG Docket No. 13–24); Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities (CG Docket No. 03–123). *Summary:* The Commission will consider a Report and Order, Further Notice of Proposed Rulemaking, and Order to adopt measures, and seek comment on others, to enhance program management, prevent waste, fraud, and abuse, and improve emergency call handling in the IP CTS program.
5	Wireline Competition	*Title:* Implementing Section 503 of RAY BAUM'S Act (WC Docket No. 18–335); Rules and Regulation Implementing the Truth in Caller ID Act of 2009 (WC Docket No. 11–39). *Summary:* The Commission will consider a Notice of Proposed Rulemaking proposing to amend its Truth in Caller ID rules to implement the anti-spoofing provisions of the RAY BAUM'S Act.

* * * * *

The meeting site is fully accessible to people using wheelchairs or other mobility aids. Sign language interpreters, open captioning, and assistive listening devices will be provided on site. Other reasonable accommodations for people with disabilities are available upon request. In your request, include a description of the accommodation you will need and a way we can contact you if we need more information. Last minute requests will be accepted, but may be impossible to fill. Send an email to: *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Additional information concerning this meeting may be obtained from the Office of Media Relations, (202) 418–0500; TTY 1–888–835–5322. Audio/Video coverage of the meeting will be broadcast live with open captioning over the internet from the FCC Live web page at *www.fcc.gov/live.*

For a fee this meeting can be viewed live over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the internet. To purchase these services, call (703) 993–3100 or go to *www.capitolconnection.gmu.edu.*

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2019–02229 Filed 2–13–19; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL HOUSING FINANCE AGENCY

[No. 2019–N–2]

Proposed Collection; Comment Request

AGENCY: Federal Housing Finance Agency.

ACTION: 30-Day notice of submission of information collection for approval from Office of Management and Budget; request for reinstatement of an expired collection.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA), the Federal Housing Finance Agency (FHFA or the Agency) is seeking public comments concerning a previously approved information collection known as ''Advances to Housing Associates,'' which has been assigned control number 2590–0001 by the Office of Management and Budget (OMB). FHFA intends to submit the information collection to OMB for review and approval of a three-year renewal and reinstatement of the control number, which expired on December 31, 2018.

DATES: Interested persons may submit comments on or before March 18, 2019.

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Attention: Desk Officer for the Federal Housing Finance Agency, Washington, DC 20503, Fax: (202) 395–3047, Email: *OIRA_submission@omb.eop.gov.* Please also submit comments to FHFA, identified by ''Proposed Collection; Comment Request: 'Advances to Housing Associates, (No. 2019–N–2)' '' by any of the following methods:

- *Agency Website: www.fhfa.gov/open-for-comment-or-input.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comment to the *Federal eRulemaking Portal,* please also send it by *email* to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by the agency.
- *Mail/Hand Delivery:* Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW, Washington, DC 20219, ATTENTION: Proposed Collection; Comment Request: ''Advances to Housing Associates, (No. 2019–N–2)''.

We will post all public comments we receive without change, including any personal information you provide, such as your name and address, email address, and telephone number, on the FHFA website at *http://www.fhfa.gov.* In addition, copies of all comments received will be available for examination by the public through the electronic comment docket for this PRA Notice also located on the FHFA website.

FOR FURTHER INFORMATION CONTACT: Jonathan F. Curtis, Financial Analyst, *Jonathan.Curtis@fhfa.gov,* (202) 649–3321, or Eric M. Raudenbush, Associate General Counsel, *Eric.Raudenbush@fhfa.gov,* (202) 649–3084 (these are not toll-free numbers); Federal Housing Finance Agency, 400 Seventh Street SW, Washington, DC 20219. The Telecommunications Device for the Hearing Impaired is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

A. Need for and Use of the Information Collection

Section 10b of the Federal Home Loan Bank Act (Bank Act) establishes the requirements for making Federal Home Loan Bank (Bank) advances (secured loans) to nonmember mortgagees, which are referred to as ''Housing Associates''

in FHFA's regulations.[1] Section 10b also establishes the eligibility requirements an applicant must meet in order to be certified as a Housing Associate.

Part 1264 of FHFA's regulations implements the statutory eligibility requirements and establishes uniform review criteria the Banks must use in evaluating applications from entities that wish to be certified as a Housing Associate. Specifically, § 1264.4 implements the statutory eligibility requirements and provides guidance to an applicant on how it may satisfy those requirements.[2] Section 1264.5 authorizes the Banks to approve or deny all applications for certification as a Housing Associate, subject to the statutory and regulatory requirements.[3] Section 1264.6 permits an applicant that has been denied certification by a Bank to appeal that decision to FHFA.[4]

In part 1266 of FHFA's regulations, subpart B governs Bank advances to Housing Associates that have been approved under part 1264. Section 1266.17 establishes the terms and conditions under which a Bank may make advances to Housing Associates.[5] Specifically, § 1266.17(e) imposes a continuing obligation on each certified Housing Associate to provide information necessary for the Bank to determine if it remains in compliance with applicable statutory and regulatory requirements, as set forth in part 1264.

The OMB control number for the information collection, which expired on December 31, 2018, is 2590–0001. The likely respondents include entities applying to be certified as a Housing Associate and current Housing Associates.

B. Burden Estimates

FHFA estimates the total annualized hour burden imposed upon respondents by this information collection to be 318 hours (14 hours for applicants + 304 hours for current Housing Associates), based on the following calculations:

I. Applicants

FHFA estimates that the total annual average number of entities applying to be certified as a Housing Associate over the next three years will be one, with one response per applicant. The estimate for the average hours per application is 14 hours. Therefore, the estimate for the total annual hour burden for all applicants is 14 hours (1 applicant × 1 response per applicant × 14 hours = 14 hours).

[1] *See* 12 U.S.C. 1430b; 12 CFR 1264.3.

[2] *See* 12 CFR 1264.4.

[3] *See* 12 CFR 1264.5.

[4] *See* 12 CFR 1264.6.

[5] *See* 12 CFR 1266.17.

II. Current Housing Associates

FHFA estimates that the total annual average number of existing Housing Associates over the next three years will be 76, with one response per Housing Associate required to comply with the regulatory reporting requirements. The estimate for the average hours per response is 4 hours. Therefore, the estimate for the total annual hour burden for current Housing Associates is 304 hours (76 certified Housing Associates × 1 response per associate × 4 hours = 304 hours).

C. Comments Request

In accordance with the requirements of 5 CFR 1320.8(d), FHFA published an initial notice and request for public comments regarding this information collection in the **Federal Register** on October 17, 2018.[6] The 60-day comment period closed on December 17, 2018. FHFA received no comments.

FHFA requests written comments on the following: (1) Whether the collection of information is necessary for the proper performance of FHFA functions, including whether the information has practical utility; (2) the accuracy of FHFA's estimates of the burdens of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Dated: February 7, 2019.

Kevin Winkler,

Chief Information Officer, Federal Housing Finance Agency.

[FR Doc. 2019–02304 Filed 2–13–19; 8:45 am]

BILLING CODE 8070–01–P

[6] *See* 83 FR 52451 (Oct. 17, 2018).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended, and Determination of the Chief Operating Officer, CDC, pursuant to Public Law 92–463. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—SIP19–006, Evaluating Community Clinical Linkage Interventions in the National Breast and Cervical Cancer Early Detection Program (NBCCEDP), SIP19–007, Improving cancer survivor treatment and outcomes by ensuring appropriate emergency/acute care treatment and SIP19–008, Feasibility Testing of a Model Cancer Surveillance Report Using Electronic Health Record Data.

Dates: May 2, 2019.

Times: 10:30 a.m.–6:30 p.m., EDT.

Place: Teleconference.

Agenda: To review and evaluate grant applications.

For Further Information Contact: Jaya Raman, Ph.D., Scientific Review Officer, CDC, 4770 Buford Highway, Mailstop F80, Atlanta, Georgia 30341, Telephone: (770) 488–6511, *kva5@cdc.gov*.

The Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Sherri Berger,

Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2019–02297 Filed 2–13–19; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket No. CDC–2018–0057]

Notice of Availability of Draft Environmental Impact Statement, Public Meeting, and Request for Comments; Acquisition of Site for Development of a Replacement Underground Safety Research Program Facility for the Centers for Disease Control and Prevention/ National Institute for Occupational Safety and Health (CDC/NIOSH) in Mace, West Virginia

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of availability; announcement of public meeting; and request for comments.

SUMMARY: The Centers for Disease Control and Prevention (CDC) within the Department of Health and Human Services (HHS), in cooperation with the General Services Administration (GSA), announces the availability of a Draft Environmental Impact Statement (EIS) for the proposed acquisition of a site in Mace, West Virginia, and the development of this site into a replacement for the National Institute for Occupational Safety and Health (NIOSH) Underground Safety Research Program facility (Proposed Action). The proposed acquisition and development would replace the former Lake Lynn Experimental Mine in Fayette County, Pennsylvania, and would support research programs focused on miner health and safety issues. The site being considered for acquisition and development includes 461.35 acres located off U.S. Route 219 in Randolph and Pocahontas Counties near Mace, West Virginia (Site).

The Draft EIS and this notice are published pursuant to the requirements of the National Environmental Policy Act of 1969 (NEPA) as implemented by the Council on Environmental Quality (CEQ) Regulations (40 CFR parts 1500–1508). In parallel with the NEPA process, CDC is also conducting consultation under Section 106 of the National Historic Preservation Act to evaluate the potential effects, if any, of the Proposed Action on historic properties.

A Notice of Intent for this Draft EIS was published in the **Federal Register** on June 14, 2018 (83 FR 27781).

DATES:

Public Meeting: A public meeting in open house format will be held on March 6, 2019, in Slatyfork, West Virginia, to present the findings of the Draft EIS and to solicit comments. The meeting will begin at 5:30 p.m. and end no later than 8:30 p.m. In case of inclement weather, please send an email to *cdc-macewv-eis@cdc.gov* or call (770) 488–8170 to check on the status of the meeting.

Written comments: Written public comments must be submitted by 11:59 p.m. on April 5, 2019.

Deadline for Requests for Special Accommodations: Persons wishing to participate in the public meeting who need special accommodations should contact Sam Tarr at 770–488–8170 by 5:00 p.m. Eastern Time, February 27, 2019.

ADDRESSES: The public scoping meeting will be held at the Linwood Community Library, 72 Snowshoe Drive, Slatyfork, West Virginia 26291.

Copies of the Draft EIS can be obtained at:

- *Federal eRulemaking Portal: http://www.regulations.gov* (reference Docket No. CDC–2018–0057).
- Linwood Community Library, 72 Snowshoe Drive, Slatyfork, West Virginia 26291.
- *By written request (electronic copies only) to: cdc-macewv-eis@cdc.gov.*

You may submit comments identified by Docket No. CDC–2018–0057 by either of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov* (Follow the instructions for submitting comments).
- *U.S. Mail:* Sam Tarr, Office of Safety, Security, and Asset Management (OSSAM), Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–K80, Atlanta, Georgia 30329–4027.

Instructions: All submissions must include the agency name and Docket Number. All relevant comments received will be posted to *http://www.regulations.gov* (personally identifiable information, except for first and last names, will be redacted). For access to the docket to review background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT:

Sam Tarr, Office of Safety, Security, and Asset Management (OSSAM), Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS–K80, Atlanta, Georgia 30329–4027, phone: (770) 488–8170, or email: *cdc-macewv-eis@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Background: CDC is dedicated to protecting health and promoting quality of life through the prevention and control of disease, injury, and disability. NIOSH, one of CDC's Centers, Institutes, and Offices, was established by the Occupational Safety and Health Act of 1970. NIOSH plans, directs, and coordinates a national program to develop and establish recommended occupational safety and health standards, conduct research and training, provide technical assistance, and perform related activities to ensure safe and healthful working conditions for every working person in the United States.

In 1997, when the mine safety and health function was transferred from the Bureau of Mines (BOM) to NIOSH, NIOSH took over the lease for a facility referred to as the Lake Lynn Experimental Mine (LLEM). BOM had leased the LLEM facility since 1982. The LLEM is located 60 miles south of Pittsburgh, Pennsylvania. The LLEM and its aboveground fire testing facility were primarily used for studies and research on mine explosions, mine seals, mine rescue, ventilation, diesel exhaust, new health and safety technologies, ground control, and fire suppression. After December 2012, the property was no longer available for long-term leasing. CDC attempted to purchase the LLEM underlying property, but NIOSH vacated the LLEM after market-based purchase offers were rejected by the property owners.

In 2013, CDC completed a Project Development Study to outline a design solution to replace the LLEM. The study presented the facility and site requirements and design concepts for the replacement facilities. In 2016, to identify potentially available locations that could accommodate the space requirements defined in the 2013 study, GSA issued (on behalf of CDC) two separate Requests for Expressions of Interest (REOI) for a site, developed or undeveloped, that could be used for the new underground safety research facility. The first REOI, advertised in June 2016, contained a limited delineated area within a 200-mile radius of the LLEM. The REOI set forth criteria that would be used to evaluate the suitability of the submitted sites. One expression of interest that had the potential to meet the minimum criteria was received. After further evaluation, however, the site was found to be non-viable.

The second REOI was issued in October 2016 and expanded the delineated area to the entire contiguous United States. Three expressions of interest were received for sites in Kentucky, Missouri, and West Virginia. The Kentucky site did not meet the minimum criteria, and the Missouri site expression of interest did not contain all necessary information to evaluate. The offeror of the Missouri site did not respond to subsequent GSA inquiries.

The potential site in West Virginia met the minimum criteria and was determined to be a viable site. The site is located near Mace, West Virginia, and straddles the Randolph and Pocahontas County lines.

In accordance with NEPA, as implemented by the CEQ regulations (40 CFR parts 1500–1508), with GSA as a cooperating agency, CDC prepared a Draft EIS for the proposed acquisition of the Site and construction of a new underground safety research facility on the Site. Under NEPA, federal agencies are required to evaluate the environmental effects of their proposed actions and a range of reasonable alternatives to the proposed action

before making a decision. The Draft EIS evaluates the following two alternatives: the Proposed Action Alternative (acquisition of the Site and construction of a new underground safety research facility) and the No Action Alternative. No other alternatives were considered because only one qualifying site was identified through the site selection process discussed above.

Impacts on the following resources are considered in the Draft EIS: Noise and vibration; geology, topography, and soils; water resources; utilities and infrastructure; and biological resources—vegetation and threatened and endangered species. Cultural resources were dismissed because a phase I archaeological reconnaissance survey identified one isolated artifact and confirmed low potential for additional archaeological resources. Viewshed and vibration analyses indicated that the potential for affecting historic structures would be negligible. No observable direct impacts on cultural resources are anticipated. Section 106 consultation under the National Historic Preservation Act is ongoing and will be documented in the record of decision. The status of the Section 106 consultation process to date is documented in Chapter 1 of the Draft EIS.

The purpose of this notice is to inform interested parties regarding the availability of the Draft EIS for review and to solicit comments. To facilitate public comments, a public meeting will be held on March 6, 2019, at the Linwood Community Library, 72 Snowshoe Drive, Slatyfork, West Virginia 26291, from 5:30 p.m. to 8:30 p.m. Eastern Standard Time. The public meeting will be an open house format. Copies of the draft EIS will be available at the meeting, and poster stations will provide a summary of the NEPA process and the findings of the EIS. Representatives of CDC and GSA will be available to answer one-on-one questions. There will be no formal presentation or formal testimonies. Participants may arrive at any time between 5:30 p.m. and 8:30 p.m. Eastern Time. Comment forms will be provided for written comments, and a stenographer will be available to transcribe one-on-one oral comments.

After the public comment period ends, CDC will consider all comments received, revise the Draft EIS to address these comments, select a preferred alternative, and issue a Final EIS. CDC will consider the Final EIS when deciding whether to proceed with the proposed site acquisition and campus development.

Dated: February 6, 2019.

Sandra Cashman,

Executive Secretary, Centers for Disease Control and Prevention.

[FR Doc. 2019–01910 Filed 2–13–19; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended, and Determination of the Chief Operating Officer, CDC, pursuant to Public Law 92–463. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—SIP19–010, Nutrition and Obesity Policy Research and Evaluation Network (NOPREN) and SIP19–011, Physical Activity Policy Research and Evaluation Network (PAPREN).

Dates: May 16, 2019.

Times: 11:00 a.m.–6:30 p.m., EDT.

Place: Teleconference.

Agenda: To review and evaluate grant applications.

For Further Information Contact: Jaya Raman Ph.D., Scientific Review Officer, CDC, 4770 Buford Highway, Mailstop F80, Atlanta, Georgia 30341, Telephone: (770) 488–6511, *kva5@cdc.gov*.

The Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Sherri Berger,

Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2019–02299 Filed 2–13–19; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended, and Determination of the Chief Operating Officer, CDC, pursuant to Public Law 92–463. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)–SIP19–012, Supporting and Evaluating Initiatives to Prevent Overservice of Alcohol.

Dates: May 14, 2019.

Times: 11:00 a.m.—6:30 p.m., EDT.

Place: Teleconference.

Agenda: To review and evaluate grant applications.

For Further Information Contact: Jaya Raman Ph.D., Scientific Review Officer, CDC, 4770 Buford Highway, Mailstop F80, Atlanta, Georgia 30341, Telephone: (770) 488–6511, *kva5@cdc.gov*.

The Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Sherri Berger,

Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2019–02300 Filed 2–13–19; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended, and Determination of the Chief Operating Officer, CDC, pursuant to Public Law 92–463. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—DP19–003, Epidemiology of Lupus: Longitudinal Studies in Population-Based Cohorts.

Dates: May 8, 2019.

Times: 11:00 a.m.–6:30 p.m., EDT.

Place: Teleconference.

Agenda: To review and evaluate grant applications.

For Further Information Contact: Jaya Raman, Ph.D., Scientific Review Officer, CDC, 4770 Buford Highway, Mailstop, F80, Atlanta, Georgia 30341, Telephone: (770) 488–6511, *kva5@cdc.gov*.

The Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Sherri Berger,

Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2019–02296 Filed 2–13–19; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended, and Determination of the Chief Operating Officer, CDC, pursuant to Public Law 92–463. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—SIP19–009, Assessing the Lifetime Economic Burden in Men with Metastatic Prostate Cancer, including Pain Management.

Dates: May 9, 2019.

Times: 11:00 a.m.–6:30 p.m., EDT.

Place: Teleconference.

Agenda: To review and evaluate grant applications.

For Further Information Contact: Jaya Raman Ph.D., Scientific Review Officer, CDC, 4770 Buford Highway, Mailstop F80, Atlanta, Georgia 30341, Telephone: (770) 488–6511, *kva5@cdc.gov*.

The Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Sherri Berger,

Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2019–02298 Filed 2–13–19; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended, and the Determination of the Chief Operating Officer, CDC, pursuant to Public Law 92–463. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP)—RFA–OH–19–002, NIOSH Occupational Safety and Health Surveillance Collaboration, Education and Translation Special Emphasis Panel.

Date: April 11, 2019.

Time: 1:00 p.m.–4:00 p.m. EDT.

Place: Teleconference.

Agenda: To review and evaluate grant applications.

For Further Information Contact: Nina Turner, Ph.D., Scientific Review Officer, Office of Extramural Programs, 1095 Willowdale Road, Morgantown, West Virginia, 26506, (304) 285–5976; *nxt2@cdc.gov.*

The Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Sherri Berger,

Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2019–02301 Filed 2–13–19; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10680, CSM–10180 and CMS–10440]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by *March 18, 2019.*

ADDRESSES: When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions:

OMB, Office of Information and Regulatory Affairs

Attention: CMS Desk Officer

Fax Number: (202) 395–5806 *OR*

Email: OIRA_submission@omb.eop.gov

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at website address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html*

1. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

2. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Title of Information Collection:* Electronic Visit Verification Compliance Survey; *Type of Information Collection Request:* New collection (request for a new OMB control number); *Use:* This collection entails an electronic web-based survey that will allow states to self-report their progress in implementing electronic visit verification (EVV) for personal care services (PCS) and home health care services (HHCS), as required by section 1903(l) of the Social Security Act. CMS will use the survey data to assess states' compliance with section 1903(l) of the Act and levy Federal Medical Assistance Percentage (FMAP) reductions where necessary as required by 1903(l) of the Act. Data collection will begin in November 2019 and will end when all states have fully implemented EVV systems according to the requirements specified at section 1903(l) of the Act.

The survey will be disseminated to all 51 state Medicaid agencies (including the District of Columbia) and the Medicaid agencies of five US territories. States will be required to complete the survey in order to demonstrate that they are complaint with Section 1903(l) of the Act by reporting on their EVV implementation status for PCS provided under sections 1905(a)(24), 1915(c), 1915(i), 1915(j), 1915(k), and Section 1115 of the Act; and HHCS provided under 1905(a)(7) of the Act or under a demonstration project or waiver (*e.g.,* 1915(c) or 1115 of the Act).

The survey will be a live form, meaning states will have the ability to update their 1903(l) compliance status on a continuous basis. As FMAP reductions are assigned quarterly per 1903(l) of the Act, states who are not in compliance will be asked to review their survey information on a quarterly basis to ensure it is up-to-date and to update their survey responses as needed until they come into compliance.

The survey instrument has been revised subsequent to the publication of the 30-day notice (October 5, 2018; 83 FR 50381). *Form Number:* CMS–10680 (OMB control number: 0938-New); *Frequency:* On occasion; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 56; *Number of Responses:* 336; *Total Annual Hours:* 504. (For questions regarding this collection contact Ryan Shannahan at 410–786–0295.)

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Home Health Change of Care Notice; *Use:* The purpose of the Home Health Change of Care Notice (HHCCN) is to notify original Medicare beneficiaries receiving home health care benefits of plan of care changes. Home health agencies (HHAs) are required to provide written notice to Original Medicare beneficiaries under various circumstances involving the reduction or termination of items and/or services consistent with Home Health Agencies Conditions of Participation (COPs).

The home health COP requirements are set forth in § 1891[42 U.S.C. 1395bbb] of the Social Security Act (the Act). The implementing regulations under 42 CFR 484.10(c) specify that Medicare patients receiving HHA services have rights. The patient has the right to be informed, in advance about the care to be furnished, and of any changes in the care to be furnished. The HHA must advise the patient in advance of the disciplines that will furnish care, and the frequency of visits proposed to be furnished. The HHA must advise the patient in advance of any change in the plan of care before the change is made.''

Notification is required for covered and non-covered services listed in the plan of care (POC).The beneficiary will use the information provided to decide whether or not to pursue alternative options to continue receiving the care noted on the HHCCN. *Form Number:* CMS–10180 (OMB control number: 0938–0988); *Frequency:* Reporting—Annually; *Affected Public:* State, Local or Tribal governments; *Number of Respondents:* 12,149; *Total Annual Responses:* 13,640,524; *Total Annual Hours:* 908,459. (For policy questions regarding this collection contact Jennifer McCormick at 410–786–2852.)

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Data Collection to Support Eligibility Determinations for Insurance Affordability Programs and Enrollment through Affordable Insurance Exchanges, Medicaid and Children's Health Insurance Program Agencies; *Use:* Information collected by the Marketplace, Medicaid or CHIP agency will be used to determine eligibility for coverage through the Marketplace and insurance affordability programs (*i.e.,* Medicaid, CHIP, and advance payment of the premium tax credits), and assist consumers in enrolling in a QHP if eligible. Applicants include anyone who may be eligible for coverage through any of these programs.

The Marketplace verifies the information provided on the application, communicates with the applicant or his/her authorized representative and subsequently provides the information to the health plan selected by the applicant so that it can enroll him/her in a QHP. The Marketplace also uses the information provided in support of its ongoing operations, including activities such as verifying continued eligibility for all programs, processing appeals, reporting

on and managing the insurance affordability programs for eligible individuals, performing oversight and quality control activities, combatting fraud, and responding to any concerns about the security or confidentiality of the information. *Form Number:* CMS–10440 (OMB control number: 0938–1191); *Frequency:* Annually; *Affected Public:* Private Sector (Business or other for-profits, Not-for-Profit Institutions); *Number of Respondents:* 4,662,000; *Total Annual Responses:* 4,662,000; *Total Annual Hours:* 946,386. (For policy questions regarding this collection contact Anne Pesto at 410–786–3492.)

Dated: February 8, 2019.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2019–02235 Filed 2–13–19; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–R–284, CMS–R–305, CMS–10455 and CMS–10520]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by April 15, 2019.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number _____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at website address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–R–284 Transformed—Medicaid Statistical Information System (T–MSIS)

CMS–R–305 External Quality Review (EQR) of Medicaid Managed Care Organizations (MCOs) and Supporting Regulations

CMS–10455 Report of a Hospital Death Associated with Restraint or Seclusion

CMS–10520 Marketplace Quality Standards

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Transformed—Medicaid Statistical Information System (T–MSIS); *Use:* The data reported in T–MSIS are used by federal, state, and local officials, as well as by private researchers and corporations to monitor past and projected future trends in the Medicaid program. The data provide the only national level information available on enrollees, beneficiaries, and expenditures. It also provides the only national level information available on Medicaid utilization. The information is the basis for analyses and for cost savings estimates for the Department's cost sharing legislative initiatives to Congress. The collected data are also crucial to our actuarial forecasts. *Form Number:* CMS–R–284 (OMB control number: 0938–0345); *Frequency:* Quarterly and monthly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 55; *Total Annual Responses:* 660; *Total Annual Hours:* 6,600. (For policy questions regarding this collection contact Connie Gibson at 410–786–0755.)

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* External Quality Review (EQR) of Medicaid Managed Care Organizations (MCOs) and Supporting Regulations; *Use:* State agencies must provide to the external quality review organization (EQRO) information obtained through methods consistent with the protocols specified by CMS. This information is used by the EQRO to determine the quality of care furnished by an MCO. Since the EQR results are made available to the general public, this allows Medicaid/CHIP enrollees and potential enrollees to make informed choices regarding the

selection of their providers. It also allows advocacy organizations, researchers, and other interested parties access to information on the quality of care provided to Medicaid beneficiaries enrolled in Medicaid/CHIP MCOs. States use the information during their oversight of these organizations. *Form Number:* CMS–R–305 (OMB control number 0938–0786); *Frequency:* Yearly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 629; *Total Annual Responses:* 4,869; *Total Annual Hours:* 426,492. (For policy questions regarding this collection contact Jennifer Sheer at 410–786–1769.)

3. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Report of a Hospital Death Associated with Restraint or Seclusion; *Use:* The final rule, which finalized the regulations at 42 CFR 482.13(g), published on May, 16, 2012 (77 FR 29074) included a reduction in the reporting requirements related to hospital deaths associated with the use of restraint or seclusion. Section § 482.13(g) requires that hospitals must use form CMS–10455 to report those deaths associated with restraint and/or seclusion directly to the Centers for Medicare & Medicaid Services (CMS) Regional Office (RO). This requirement also applies to rehabilitation or psychiatric distinct part units (DPUs) in Critical Access Hospitals (CAHs). Currently, the hospital, CAH, or psychiatric DPU must submit the form CMS–10455 to the CMS RO via fax or email, based on RO's preference. Beginning on May 9, 2014, hospitals were no longer required to report to CMS, those deaths that were not associated with the use of seclusion and where the only restraints used were 2-point soft wrist restraints. This reporting requirement change resulted in no necessary edits to the form CMS–10455. It was estimated that this would reduce the volume of reports that must be submitted by 90 percent for hospitals. In addition, the final rule replaced the previous requirement for reporting via telephone to CMS, which proved to be cumbersome for both CMS and hospitals, with a requirement that allows the submission of reports on the form CMS–10455 via facsimile or electronically, as determined by CMS. In this PRA package, CMS is seeking OMB approval for an electronically submitted version of the currently approved paper version of form CMS–10455. *Form Number:* CMS–10455 (OMB control number: 0938–1210); *Frequency:* Occasionally; *Affected Public:* Private Sector; *Number of Respondents:* 6,389; *Number of Responses:* 6,389; *Total Annual Hours:* 6,389. (For policy questions regarding this collection contact Caroline Gallaher at 410–786–8705.)

4. *Type of Information Collection Request:* Revision of a currently approved collection. *Title of*

Information Collection: Marketplace Quality Standards; *Use:* The Patient Protection and Affordable Care Act establishes requirements to support the delivery of quality health care coverage for health insurance issuers offering Qualified Health Plans (QHPs) in Exchanges. Section 1311(c)(3) of the Patient Protection and Affordable Care Act directs the Secretary to develop a system to rate QHPs on the basis of quality and price and requires Exchanges to display this quality rating information on their respective websites. Section 1311(c)(4) of the Patient Protection and Affordable Care Act requires the Secretary to develop an enrollee satisfaction survey system to assess enrollee experience with each QHP (with more than 500 enrollees in the previous year) offered through an Exchange. Section 1311(h) requires QHPs to contract with certain hospitals that meet specific patient safety and health care quality standards.

This collection of information is necessary to provide adequate and timely health care quality information for consumers, regulators, and Exchanges as well as to collect information to appropriately monitor and provide a process for a survey vendor to appeal HHS' decision to not approve a QHP Enrollee Survey vendor application. *Form Number:* CMS–10520 (OMB control number: 0938–1249) *Frequency:* Annually. *Affected Public:* Public sector (Individuals and Households), Private sector (Business or other for-profits and Not-for-profit institutions). *Number of Respondents:* 264. *Total Annual Responses:* 264. *Total Annual Hours:* 348,764. (For policy questions regarding this collection contact Nidhi Singh Shah at 301–492–5110.)

Dated: February 8, 2019.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2019–02231 Filed 2–13–19; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–D–4417]

Center for Drug Evaluation and Research's Program for the Recognition of Voluntary Consensus Standards Related to Pharmaceutical Quality; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled ''CDER's Program for the Recognition of Voluntary Consensus Standards Related to Pharmaceutical Quality.'' This guidance describes a proposed program at FDA's Center for Drug Evaluation and Research (CDER) to make public a comprehensive listing of informally recognized voluntary consensus standards related to pharmaceutical quality. This program, once established, will facilitate submissions by external stakeholders and CDER staff proposing voluntary consensus standards related to pharmaceutical quality for informal recognition. CDER believes that this informal program, which is different than the formal recognition standards program in FDA's Center for Devices and Radiological Health, will help promote innovation in pharmaceutical development and manufacturing and streamline the compilation and assessment of marketing applications for products regulated by CDER. CDER is issuing this draft guidance to obtain public comments on the proposed program.

DATES: Submit either electronic or written comments on the draft guidance by April 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. Submit either electronic or written comments concerning the collection of information proposed in the draft guidance by April 15, 2019.

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–4417 for ''CDER's Program for the Recognition of Voluntary Consensus Standards Related to Pharmaceutical Quality.'' 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 office 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)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Colleen Thomas, Center for Drug Evaluation and Research (HFD–003), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 4334, Silver Spring, MD 20993–0002, 301–796–4853.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''CDER's Program for the Recognition of Voluntary Consensus Standards Related to Pharmaceutical Quality.'' This program, once established, will facilitate submissions by external stakeholders and CDER staff proposing voluntary consensus standards related to pharmaceutical quality for informal recognition.

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113) and Circular A–119 by the Office of Management and Budget (OMB) have established Federal Government policies to improve the internal management of the executive branch by directing agencies to use voluntary consensus standards developed or adopted by a standards developing organization—rather than Government-unique standards—except where these standards are inconsistent with applicable law or otherwise impractical. FDA's development and use of standards have been integral to the execution of FDA's mission.

CDER believes that this informal program, which is different than the formal recognition standards program in FDA's Center for Devices and Radiological Health, will help promote innovation in pharmaceutical development and manufacturing and streamline the compilation and review of marketing applications for products regulated by CDER. CDER also believes that this program will: (1) Allow CDER to communicate to external stakeholders that its relevant expert(s) have evaluated a consensus standard and determined if that standard is potentially useful both to industry and CDER staff and (2) provide transparency to industry regarding CDER's thinking about a method or approach.

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 CDER's Program for the Recognition of Voluntary Consensus Standards Related to Pharmaceutical Quality. 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.

II. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the OMB for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this

requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Request for Recognition of a Voluntary Consensus Standard

OMB Control Number 0910–NEW

The draft guidance for industry entitled ''CDER's Program for the Recognition of Voluntary Consensus Standards Related to Pharmaceutical Quality'' provides guidance to industry about the procedures the Center for Drug Evaluation and Research follows when a request for recognition of a voluntary consensus standard is received. The guidance outlines justifications for why a standard may be recognized wholly, partly, or not at all. The guidance also provides that any interested party may request recognition of a standard. Specifically, this process will allow CDER to:

- Receive a candidate consensus standard, with relevant information (*e.g.,* the scope of the standard and the purpose), from internal or external parties for informal recognition.
- Determine whether to informally recognize a standard in whole or in part following an internal scientific evaluation.
- List the informally recognized standards in a publicly searchable database on CDER's website, accompanied by an information sheet describing the scope and the extent of CDER's informal recognition of that standard and any other relevant information about it.

Request for Recognition of a Voluntary Consensus Standard

We estimate that FDA will receive nine requests annually. We estimate that each request will take less than 1 hour to prepare.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Request for recognition of a voluntary consensus standard	9	1	9	1	9

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

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at either *https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *https://www.regulations.gov.*

Dated: February 11, 2019.

Lowell J. Schiller,

Acting Associate Commissioner for Policy.

[FR Doc. 2019–02326 Filed 2–13–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Meeting of the Council on Graduate Medical Education

AGENCY: Health Resources and Service Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Council on Graduate Medical Education (COGME) has scheduled a public meeting. Information about COGME and the agenda for this meeting can be found on the COGME website at *https://www.hrsa.gov/advisory-committees/graduate-medical-edu/index.html.*

DATES: June 5, 2019, 8:30 a.m.–5:00 p.m. and June 6, 2019, 8:30 a.m.–2:00 p.m. ET.

ADDRESSES: This meeting will be held in-person and 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 (voice response).
- Webinar link is: *https://hrsa.connectsolutions.com/cogme.*

FOR FURTHER INFORMATION CONTACT: Kennita R. 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: COGME makes recommendations to the Secretary of HHS (Secretary) and Congress on policy, program development, and other matters of significance as specified by section 762 of Title VII of the Public Health Service (PHS) Act. Issues addressed by COGME include (1) the nature and financing of medical education training; (2) the development of performance measures and longitudinal evaluation methods of medical education programs; (3) foreign medical school graduates; (4) the supply and distribution of the physician workforce in the United States, including any projected shortages or excesses; (5) deficiencies in databases of the supply and distribution of the physician workforce and postgraduate programs for training physicians; and (6) appropriation levels for certain programs under Title VII of the PHS Act. Additionally, COGME encourages entities providing graduate medical education to conduct activities to voluntarily achieve the recommendations of the council. COGME submits reports to the Secretary of HHS, the Senate Committee on Health, Education, Labor and Pensions, and the House of Representatives Committee on Energy and Commerce.

During the June 2019, meeting, COGME will discuss the topic of rural health in relation to workforce development and graduate medical education financing. Agenda items are subject to change as priorities dictate. Refer to the COGME website for any updated information concerning the meeting. The meeting agenda will be available on the COGME website at least 14 calendar 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 provide written statements or make oral comments to COGME should be sent to Kennita R. Carter, DFO, using the contact information above at least three business days prior to the meeting.

Individuals who plan to attend and need special assistance or another reasonable accommodation should notify Kennita R. Carter, DFO, using the contact information 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 20 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. 2019–02317 Filed 2–13–19; 8:45 am]

BILLING CODE 4165–15–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 Services 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 public meetings for the 2019 calendar year (CY). Information about ACTPCMD, agendas, and materials for these meetings can be found on the ACTPCMD website at *https://www.hrsa.gov/advisory-committees/primarycare-dentist/index.html.*

DATES: June 11, 2019, 8:30 a.m. Eastern Time (ET)–5:00 p.m. ET; August 8, 2019, 8:30 a.m.–5:00 p.m. ET.

ADDRESSES: Meetings may be held in-person, by teleconference, and/or via Adobe Connect webinar. In-person ACTPCMD meetings will be held at 5600 Fishers Lane, Rockville, Maryland 20857. Instructions for joining the meetings either in person or remotely will be posted on the ACTPCMD website 30 business days before the date of the meeting. For meeting information updates, visit the ACTPCMD website meeting page at *https://www.hrsa.gov/advisory-committees/primarycare-dentist/meetings.html*

FOR FURTHER INFORMATION CONTACT: Kennita Carter, MD, Designated Federal Official (DFO), Division of Medicine and Dentistry, Bureau of Health Workforce (BHW), HRSA, 5600 Fishers Lane, 15N116, Rockville, Maryland 20857; (301) 945–3505 or *BHWACTPCMD@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, Chairman, and ranking members of the Senate Committee on Health, Education, Labor and Pensions, and the House of Representatives Committee on Energy and Commerce. ACTPCMD also develops, publishes, and implements performance measures and guidelines for longitudinal evaluations of programs authorized under Title VII, Part C of the PHS Act, and recommends appropriation levels for programs under this Part.

During ACTPCMD's CY 2019 meetings, the committee will discuss matters concerning policy, program development, and other matters of significance concerning medicine and dentistry activities. Refer to the ACTPCMD website listed above for all current and updated information concerning CY 2019 ACTPCMD meetings, including draft agendas and meeting materials that will be posted at least 10 business days before the start of each meeting.

Members of the public will have the opportunity to provide comments. Public participants may submit written statements in advance of the scheduled meeting(s). Oral comments will be honored in the order they are requested and may be limited as time allows. Requests to submit a written statement or make oral comments to the ACTPCMD should be sent to Kennita Carter using the contact information above at least five business days before the meeting date(s).

Individuals who need special assistance or another reasonable accommodation should notify Kennita Carter using the contact information listed above at least 10 business days before the meeting(s) they wish to attend. Since all in-person meetings will occur 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 20 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. 2019–02318 Filed 2–13–19; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Meeting of the Advisory Committee on Heritable Disorders in Newborns and Children

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Advisory Committee on Heritable Disorders in Newborns and Children (ACHDNC) has scheduled a public meeting. Information about the ACHDNC and the agenda for this meeting can be found on the ACHDNC website at *https://www.hrsa.gov/advisory-committees/heritable-disorders/index.html.*

DATES: April 23, 2019, 9:00 a.m. to 5:00 p.m. Eastern Time (ET) and April 24, 2019, from 9:00 a.m. to 3:00 p.m. ET.

ADDRESSES: This meeting will be held in-person and will be webcast. The address for the meeting is 5600 Fishers Lane, Rockville, Maryland 20857. While this meeting is open to the public, advance registration is required. Please visit the ACHDNC website for information on registration: *https://www.hrsa.gov/advisory-committees/heritable-disorders/index.html.* The deadline for online registration is 12:00 p.m. ET on April 19, 2019. Instructions on how to access the meeting via

webcast will be provided upon registration.

FOR FURTHER INFORMATION CONTACT: Alaina Harris, Maternal and Child Health Bureau (MCHB), HRSA, 5600 Fishers Lane, Room 18W66, Rockville, Maryland 20857; 301–443–0721; or *AHarris@hrsa.gov.*

SUPPLEMENTARY INFORMATION: ACHDNC provides advice and recommendations to the Secretary of HHS (Secretary) on the development of newborn screening activities, technologies, policies, guidelines, and programs for effectively reducing morbidity and mortality in newborns and children having, or at risk for, heritable disorders. ACHDNC's recommendations regarding inclusion of additional conditions for screening, following adoption by the Secretary, are evidence-informed preventive health services provided for in the comprehensive guidelines supported by HRSA through the Recommended Uniform Screening Panel (RUSP) pursuant to section 2713 of the Public Health Service Act (42 U.S.C. 300gg–13). Under this provision, non-grandfathered group health plans and health insurance issuers offering group or individual health insurance are required to provide insurance coverage without cost-sharing (a co-payment, co-insurance, or deductible) for preventive services for plan years (*i.e.,* policy years) beginning on or after the date that is one year from the Secretary's adoption of the condition for screening.

During the April 2019 meeting, ACHDNC will hear from experts in the fields of public health, medicine, heritable disorders, rare disorders, and newborn screening. Agenda items include: (1) Assessing state readiness to implement screening for conditions added to the RUSP; (2) discussing newborn screening pilot studies; (3) reviewing rare disease registries; (4) reviewing spinal muscular atrophy (SMA) implementation; and (5) receiving workgroup updates. Agenda items are subject to changes as priorities dictate and the final meeting agenda will be available on ACHDNC's website at *https://www.hrsa.gov/advisory-committees/heritable-disorders/index.html.* Information about the ACHDNC, a roster of members, as well as past meeting summaries are also available on the ACHDNC website.

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. To submit written comments or request time for an oral comment at the meeting, please register online by 12:00 p.m. ET on April 17, 2019. Visit the ACHDNC website for information on registration, *https://www.hrsa.gov/advisory-committees/heritable-disorders/index.html.* Individuals associated with groups or who plan to provide comments on similar topics may be asked to combine their comments and present them through a single representative. No audiovisual presentations are permitted. Written comments should identify the individual's name, address, email, telephone number, professional or organization affiliation, background or area of expertise (*e.g.,* parent, family member, researcher, clinician, public health, etc.), and the topic/subject matter.

Individuals who plan to attend and need special assistance or another reasonable accommodation should notify Alaina Harris at the contact information 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 20 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. 2019–02319 Filed 2–13–19; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; 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 Board of Scientific Counselors, NIDCD.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute on Deafness and Other Communication Disorders, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Institute on Deafness and Other Communication Disorders.

Date: March 25, 2019.

Time: 3:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Porter Neuroscience Research Center, GF–103, Building 35A Convent Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Andrew J. Griffith, Ph.D., MD, Director, Division of Intramural Research, National Institute on Deafness and Other Communication Disorders, 35A Convent Drive, GF 103, Rockville, MD 20892, 301–496–1960, *griffita@nidcd.nih.gov.*

Information is also available on the Institute's/Center's home page: *http://www.nidcd.nih.gov/about/groups/bsc/,* where an agenda and any additional information for the meeting will be posted when available.

(Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: February 8, 2019.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–02278 Filed 2–13–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Board of Scientific Counselors, NIDCD.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute on Deafness and

Other Communication Disorders, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Institute on Deafness and Other Communication Disorders.

Date: October 7–8, 2019.

Open: October 07, 2019, 8:30 a.m. to 9:00 a.m.

Agenda: Reports from the institute staff.

Place: National Institutes of Health, Porter Neuroscience Research Center, Room 610, Building 35A Convent Drive, Bethesda, MD 20892.

Closed: October 07, 2019, 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Porter Neuroscience Research Center, Room 610, Building 35A Convent Drive, Bethesda, MD 20892.

Closed: October 08, 2019, 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Porter Neuroscience Research Center, Room 610, Building 35A Convent Drive, Bethesda, MD 20892.

Contact Person: Andrew J. Griffith, MD, Ph.D., Director, Division of Intramural Research, National Institute on Deafness and Other Communication Disorders, 35A Convent Drive, GF 103, Rockville, MD 20892, 301–496–1960, *griffita@nidcd.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.nidcd.nih.gov/about/groups/bsc/,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: February 8, 2019.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–02280 Filed 2–13–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Advancing Translational Sciences; 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Advancing Translational Sciences Special Emphasis Panel; SBIR Topic 16 Review.

Date: March 6, 2019.

Time: 12:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, One Democracy Plaza, Room 1037, 6701 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Victor Henriquez, Ph.D., Scientific Review Officer, Office of Scientific Director, National Center for Advancing Translational Sciences (NCATS), National Institutes of Health, 6701 Democracy Blvd., Democracy 1, Room 1080, Bethesda, MD 20892–4878, 301–435–0813, *henriquv@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.350, B—Cooperative Agreements; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: February 8, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–02267 Filed 2–13–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Topics in Gastroenterology.

Date: February 28–March 1, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Terez Shea-Donohue, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892, *sheadonohuept@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 8, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–02251 Filed 2–13–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C.,

as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; NIDCD Clinical Research Review.
Date: March 18, 2019.
Time: 1:00 p.m. to 2:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Neuroscience Center Building (NSC), 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).
Contact Person: Shiguang Yang, DVM, Ph.D., Scientific Review Officer, Division of Extramural Activities, NIDCD, NIH, 6001 Executive Blvd., Room 8349, Bethesda, MD 20892, 301–496–8683, *yangshi@nidcd.nih.gov.*

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel; Clinical Trials Review.
Date: March 29, 2019.
Time: 11:00 a.m. to 1:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Neuroscience Center Building (NSC), 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).
Contact Person: Kausik Ray, Ph.D., Scientific Review Officer, National Institute on Deafness and Other Communication Disorders, National Institutes of Health, Rockville, MD 20850, 301–402–3587, *rayk@nidcd.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: February 8, 2019.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–02279 Filed 2–13–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; 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 of Nursing Research Initial Review Group.
Date: June 20–21, 2019.
Time: 8:00 a.m. to 12:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.
Contact Person: Cheryl Nordstrom, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6187, Bethesda, MD 20892, 301–827–1499.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: February 8, 2019.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–02242 Filed 2–13–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–16–366 Dual Purpose with Dual Benefit: Research in Biomedicine and Agriculture.
Date: March 25–26, 2019.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Tera Bounds, DVM, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3214, MSC 7808, Bethesda, MD 20892, 301–435–2306, *boundst@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Exploration of Antimicrobial Therapeutics and Resistance.
Date: March 25–26, 2019.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.
Contact Person: Susan Daum, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3202, Bethesda, MD 20892, 301–827–7233, *susan.boyle-vavra@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Pediatric Immunotherapy Discovery and Development Network (PI–DDN) (U01).
Date: March 25, 2019.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Sheraton Premier at Tyson's Corner, 8661 Leesburg Pike, Vienna, VA 22182.
Contact Person: Malaya Chatterjee, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6192, MSC 7804, Bethesda, MD 20892, (301) 806–2515, *chatterm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Cancer Biotherapeutics and Development.
Date: March 25, 2019.
Time: 8:00 a.m. to 6:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW, Washington, DC 20015.
Contact Person: Nicholas J Donato, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040, Bethesda, MD 20892, 301–827–4810, *nick.donato@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Endocrinology, Metabolism and Reproductive Biology.
Date: March 26, 2019.
Time: 10:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Gregory S Shelness, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6156, Bethesda, MD 20892–7892, (301) 435–0492, *shelnessgs@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel;

Fellowships: Endocrinology, Metabolism, Nutrition, and Reproductive Science.
Date: March 26, 2019.
Time: 10:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Elaine Sierra-Rivera, Ph.D., Scientific Review Officer, EMNR IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6182, MSC 7892, Bethesda, MD 20892, 301 435–2514, *riverase@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–18–102: Small Grants for New Investigators to Promote Diversity in Health-Related Research (R21 Clinical Trial Optional).
Date: March 26, 2019.
Time: 10:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Jianxin Hu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2156, Bethesda, MD 20892, 301–827–4417, *jianxinh@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Collaborative Minority Health and Health Disparities Research with Tribal Epidemiology Centers PAR.
Date: March 26, 2019.
Time: 11:00 a.m. to 2:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Delia Olufokunbi Sam, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, 301–435–0684, *olufokunbisamd@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; AREA (R15): Cardiac.
Date: March 27–28, 2019.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Kimm Hamann, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118A, MSC 7814, Bethesda, MD 20892, 301–435–5575, *hamannkj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; AREA Applications in Oncological Sciences.
Date: March 27, 2019.
Time: 11:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.
Contact Person: Svetlana Kotliarova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, Bethesda, MD 20892, 301–594–7945, *kotliars@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Autoimmunity and Transplantation.
Date: March 27, 2019.
Time: 1:00 p.m. to 4:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Patrick K. Lai, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2215, MSC 7812, Bethesda, MD 20892, 301–435–1052, *laip@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflicts in Tumor Cell Biology.
Date: March 27, 2019.
Time: 2:00 p.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Amy L. Rubinstein, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5152, MSC 7844, Bethesda, MD 20892, 301–408–9754, *rubinsteinal@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small business: Innovative Immunology.
Date: March 28, 2019.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: The William F. Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854.
Contact Person: David B. Winter, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892, 301–435–1152, *dwinter@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Microbial (non-HIV) Diagnostics and Food Safety, Sterilization/Disinfection, and Bioremediation.
Date: March 28–29, 2019.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW, Washington, DC 20015.
Contact Person: Gagan Pandya, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, RM 3200, MSC 7808, Bethesda, MD 20892, 301–435–1167, *pandyaga@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Biochemistry and Biophysics of Biological Macromolecules.
Date: March 28–29, 2019.
Time: 10:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Sudha Veeraraghavan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 301–435–1504, *sudha.veeraraghavan@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Mycobacterial induced immunity in HIV-infected and uninfected individuals.
Date: March 28, 2019.
Time: 10:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.
Contact Person: Jingsheng Tuo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5207, Bethesda, MD 20892, 301–451–8754, *tuoj@nei.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Myalgic Encephalomyelitis/Chronic Fatigue Syndrome.
Date: March 28, 2019.
Time: 11:00 a.m. to 3:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Jana Drgonova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5213, Bethesda, MD 20892, 301–827–2549, *jdrgonova@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Translational Research in Pediatric and Obstetric Pharmacology and Therapeutics.
Date: March 28, 2019.
Time: 11:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Dianne Hardy, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6175, MSC 7892, Bethesda, MD 20892, 301–435–1154, *dianne.hardy@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflicts: Cell Biology.
Date: March 28, 2019.
Time: 1:00 p.m. to 4:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: John Burch, Ph.D., Scientific Review Officer, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3213, MSC 7808, Bethesda, MD 20892, 301–408–9519, *burchjb@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 8, 2019.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–02264 Filed 2–13–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; HHS–NIH–CDC–SBIR PHS 2019–1 Phase I and II: POC Diagnostic for Gonorrhea and Determination of Antimicrobial Susceptibility (Topic 75).

Date: February 28, 2019.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892, (Telephone Conference Call).

Contact Person: Chelsea D. Boyd, Ph.D., Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, 5601 Fishers Lane, MSC–9823 Rockville, MD 20852–9834, 240–669–2081, *chelsea.boyd@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 8, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–02284 Filed 2–13–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group; Genetics of Health and Disease Study Section.

Date: February 25–26, 2019.

Time: 10:30 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Michael L. Bloom, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6187, MSC 7804, Bethesda, MD 20892, 301–451–0132, *bloomm2@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 8, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–02261 Filed 2–13–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–18–011: Early Phase Clinical Trials in Imaging and Image-Guided Interventions (R01 Clinical Trial Required).

Date: February 26–27, 2019.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Shing Chun Benny Lam, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, Bethesda, MD 20892, *lams4@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 8, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–02248 Filed 2–13–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections

552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Infectious Diseases, Reproductive Health, Asthma and Pulmonary Conditions Study Section.

Date: February 27–28, 2019.

Time: 7:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Seattle, 1400 Sixth Ave., Seattle, WA 98101.

Contact Person: Lisa Steele, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3139, MSC 7770, Bethesda, MD 20892, (301) 257–2638, *steeleln@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 8, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–02252 Filed 2–13–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Infectious Diseases.

Date: February 28, 2019.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Susan Daum, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3202, Bethesda, MD 20892, 301–827–7233, *susan.boyle-vavra@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 8, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–02253 Filed 2–13–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of 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: Microbiology, Infectious Diseases and AIDS Initial Review Group, Microbiology and Infectious Diseases B Subcommittee, MID–B June 2019 Review Committee.

Date: June 17–18, 2019.

Time: 8:00 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Bahia Resort Hotel, 998 West Mission Bay Drive, San Diego, CA 92109.

Contact Person: Ellen S. Buczko, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B, Rockledge Drive, MSC 7616 Bethesda, MD 20892–7616, 301–451–2676, *ebuczko1@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 8, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–02266 Filed 2–13–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center For Advancing Translational Sciences; 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 Center for Advancing Translational Sciences Special Emphasis Panel; The New Therapeutic Uses.

Date: March 26, 2019.

Time: 10:00 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, Room 206, 6701 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Christine A. Livingston, Ph.D., Scientific Review Officer, Office of Scientific Review, National Center for Advancing Translational Sciences (NCATS), National Institutes of Health, 6701 Democracy Blvd., Democracy 1, Room 1073, Bethesda, MD 20892, (301) 435–1348, *livingsc@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.350, B—Cooperative Agreements; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: February 8, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–02268 Filed 2–13–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; NHLBI Single-Site Clinical Trial Review.

Date: March 11, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Chang Sook Kim, Ph.D., Scientific Review Officer, Office of Scientific Review, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7188, Bethesda, MD 20892, 301–827–7940, *carolko@mail.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Grant Review for NHLBI K Award Recipients.

Date: March 14, 2019.

Time: 8:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Melissa E. Nagelin, Ph.D., Scientific Review Officer, Office of Scientific Review, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7202, Bethesda, MD 20892, 301–594–8518, *nagelinmh2@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Network Medicine and COPD.

Date: March 15, 2019.

Time: 8:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: David A. Wilson, Ph.D., Scientific Review Officer, Office of Scientific Review, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7204, Bethesda, MD 20892, 301–827–7953, *wilsonda2@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; K01 Career Development Programs to Promote Diversity in Health Research.

Date: March 15, 2019.

Time: 9:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The William F. Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854.

Contact Person: Lindsay M. Garvin, Ph.D., Scientific Review Officer, Office of Scientific Review, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7189, Bethesda, MD 20892, 301–827–7911, *lindsay.garvin@nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Clinical Ancillary Studies (R01).

Date: March 27, 2019.

Time: 8:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW, Washington, DC 20015.

Contact Person: YingYing Li-Smerin, MD, Ph.D., Scientific Review Officer, Office of Scientific Review, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7184, Bethesda, MD 20892, 301–827–7942, *lismerin@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Review of NHLBI Technologies for Healthy Independent Living.

Date: March 27, 2019.

Time: 12:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Office of Scientific Review, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Shelley S. Sehnert, Ph.D., Scientific Review Officer, Office of Scientific Review, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7206, Bethesda, MD 20892, 301–435–0303, *ssehnert@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; NHLBI Career Development Awards K08 and K23.

Date: March 28, 2019.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Office of Scientific Review, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Lindsay M. Garvin, Ph.D., Scientific Review Officer, Office of Scientific Review, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7189, Bethesda, MD 20892, 301–827–7911, *lindsay.garvin@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: February 8, 2019.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–02271 Filed 2–13–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; NIDA Program Project Review (PAR–18–425): Pharmacology of Drugs of Abuse During Pregnancy.

Date: February 28, 2019.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Atul Sahai, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2188, MSC 7818, Bethesda, MD 20892, 301–435–1198, *sahaia@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 8, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–02263 Filed 2–13–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory General Medical Sciences Council.

The meeting will be open to the public as indicated below, with a short public comment period at the end. Attendance is limited by the space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The open session will also be videocast and can be accessed from the NIH Videocasting and Podcasting website (*http://videocast.nih.gov*).

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory General Medical Sciences Council.

Date: May 16–17, 2019.

Closed: May 16, 2019, 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1 & E2, 45 Center Drive, Bethesda, MD 20892.

Open: May 17, 2019, 8:30 a.m. to 12:00 p.m.

Agenda: For the discussion of program policies and issues; opening remarks; report of the Director, NIGMS; and other business of the Council.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1 & E2, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Ann A. Hagan, Ph.D., Associate Director for Extramural Activities, NIGMS, NIH, DHHS, 45 Center Drive, Room 2AN24H, MSC6200, Bethesda, MD 20892–6200, (301) 594–4499, *hagana@nigms.nih.gov.*

Any interested person may file written comments with the committee by forwarding the Statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.nigms.nih.gov/About/Council,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: February 8, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–02281 Filed 2–13–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Biophysics of Neural Systems Study Section.

Date: February 28–March 1, 2019.

Time: 8:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Kimpton Hotel Monaco Baltimore Inner Harbor, 2 N Charles Street, Baltimore, MD 21201.

Contact Person: Geoffrey G. Schofield, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040–A, MSC 7850, Bethesda, MD 20892, 301–435–1235, *geoffreys@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 8, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–02255 Filed 2–13–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Immunology Integrated Review Group, Cellular and Molecular Immunology—A Study Section.

Date: February 28–March 1, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: JW Marriott New Orleans, 614 Canal Street, New Orleans, LA 70130.

Contact Person: David B Winter, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892, 301–435–1152, *dwinter@mail.nih.gov.*

Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 8, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–02249 Filed 2–13–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Computationally-Defined Behaviors in Psychiatry (R21).

Date: March 26, 2019.

Time: 12:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center Building (NSC), 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Rebecca Steiner Garcia, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6149, MSC 9608, Bethesda, MD 20892, 301–443–4525, *steinerr@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel; NIMH Pathway to Independence Awards (K99/R00).

Date: March 27, 2019.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center Building (NSC), 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: David W. Miller, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6140, MSC 9608, Bethesda, MD 20892–9608, 301–443–9734, *millerda@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel; BRAIN Initiative: Tools to Facilitate High-Throughput Microconnectivity Analysis (R01).

Date: March 29, 2019.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center Building (NSC), 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Erin E. Gray, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, 6001 Executive Boulevard, NSC 6152B, Bethesda, MD 20892, 301–402–8152, *erin.gray@nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants; 93.281 National Institutes of Health, HHS)

Dated: February 8, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–02240 Filed 2–13–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of 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 of Allergy and Infectious Diseases Special Emphasis Panel, Advancing HIV Therapeutic Vaccine Science (U01 Clinical Trial Required).

Date: February 25, 2019.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892, (*Telephone Conference Call*).

Contact Person: Chelsea D. Boyd, Ph.D., Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, 5601 Fishers Lane, MSC–9823, Rockville, MD 20852–9834, 240–669–2081, *chelsea.boyd@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 8, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–02274 Filed 2–13–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Neurogenesis and Cell Fate Study Section.

Date: February 27, 2019.

Time: 8:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Kabuki, 1625 Post Street, San Francisco, CA 94115.

Contact Person: Joanne T. Fujii, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7850, Bethesda, MD 20892, (301) 435–1178, *fujiij@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 8, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–02254 Filed 2–13–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory General Medical Sciences Council.

The meeting will be open to the public as indicated below, with a short public comment period at the end. Attendance is limited by the space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The open session will also be videocast and can be accessed from the NIH Videocasting and Podcasting website (*http://videocast.nih.gov*).

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory General Medical Sciences Council.

Date: September 19–20, 2019.

Closed: September 19, 2019, 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1 & E2, 45 Center Drive, Bethesda, MD 20892.

Open: September 20, 2019, 8:30 a.m. to 12:00 p.m.

Agenda: For the discussion of program policies and issues; opening remarks; report of the Director, NIGMS; and other business of the Council.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1 & E2, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Ann A. Hagan, Ph.D., Associate Director for Extramural Activities, NIGMS, NIH, DHHS, 45 Center Drive, Room 2AN24H, MSC6200, Bethesda, MD 20892–6200, (301) 594–4499, *hagana@nigms.nih.gov.*

Any interested person may file written comments with the committee by forwarding the Statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.nigms.nih.gov/About/Council,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: February 8, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–02246 Filed 2–13–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group, Cardiac Contractility, Hypertrophy, and Failure Study Section.

Date: February 28–March 1, 2019.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

Contact Person: Abdelouahab Aitouche, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4222, MSC 7814, Bethesda, MD 20892, 301–435–2365, *aitouchea@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 8, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–02256 Filed 2–13–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; 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 National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel; Mentored Career Development (K) and Conference (R13) Award Application Review (2019/05).

Date: March 29, 2019.

Time: 9:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, Suite 920, 6707 Democracy Boulevard, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: John P Holden, Ph.D., Scientific Review Officer, National Institute of Biomedical Imaging, and Bioengineering , National Institutes of Health, 6707 Democracy Blvd., Suite 920, Bethesda, MD 20892, (301) 496–8775, *john.holden@nih.gov.*

Dated: February 8, 2019.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–02276 Filed 2–13–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the NIH Clinical Center Research Hospital Board.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: NIH Clinical Center Research Hospital Board.

Date: April 12, 2019.

Time: 9:00 a.m. to 3:00 p.m.

Agenda: To review program policies.

Place: National Institutes of Health, Building 1, Wilson Hall, 1 Center Drive, Bethesda, MD 20892.

Contact Person: Gretchen Wood, Staff Assistant, Office of the Director, National Institutes of Health, One Center Drive, Building 1, Bethesda, MD 20892, 301–496–4272, *woodgs@nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: February 8, 2019.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–02244 Filed 2–13–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Council for Nursing Research.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Nursing Research.

Date: May 21–22, 2019.

Open: May 21, 2019, 1:00 p.m. to 5:00 p.m.

Agenda: Discussion of Program Policies and Issues.

Place: National Institutes of Health, Porter Neuroscience Research Center, Building 35A, Convent Drive, Room 620/630, Bethesda, MD 20892.

Closed: May 22, 2019, 9:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Porter Neuroscience Research Center, Building 35A, Convent Drive, Room 620/630, Bethesda, MD 20892.

Contact Person: Nara Gavini, Ph.D., MPhil., Chief, Office of Extramural Programs, National Institute of Nursing Research National Institutes of Health, 6701 Democracy Boulevard, Room 710, Bethesda, MD 20892, 301–594–8965, *Nara.Gavini@nih.gov.*

Name of Committee: National Advisory Council for Nursing Research.

Date: September 17–18, 2019.

Open: September 17, 2019, 12:00 p.m. to 5:00 p.m.

Agenda: Discussion of Program Policies and Issues.

Place: National Institutes of Health, Building 45, Natcher, Room D, 31 Center Drive, Bethesda, MD 20892.

Closed: September 18, 2019, 9:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 45, Natcher, Room D, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Nara Gavini, Ph.D., MPhil., Chief, Office of Extramural Programs, National Institute of Nursing Research National Institutes of Health, 6701 Democracy Boulevard, Room 710, Bethesda, MD 20892, 301–594–8965, *Nara.Gavini@nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *https://www.ninr.nih.gov/aboutninr/nacnr,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: February 8, 2019.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–02245 Filed 2–13–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review

Group, Diseases and Pathophysiology of the Visual System Study Section.

Date: February 25–26, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Marines' Memorial Club & Hotel, 609 Sutter Street, San Francisco, CA 94102.

Contact Person: Nataliya Gordiyenko, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5202, MSC 7846, Bethesda, MD 20892, 301.435.1265, *gordiyenkon@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 8, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–02260 Filed 2–13–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group, Cancer Immunopathology and Immunotherapy Study Section.

Date: February 25–26, 2019.

Time: 7:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Denise R. Shaw, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6158, MSC 7804, Bethesda, MD 20892, 301–435–0198, *shawdeni@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 8, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–02259 Filed 2–13–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Radiation Biology and Cancer Therapeutics.

Date: February 27, 2019.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Nicholas J. Donato, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040, Bethesda, MD 20892, 301–827–4810, *nick.donato@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 8, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–02257 Filed 2–13–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Non-HIV Anti-Infective Therapeutics.

Date: March 18–19, 2019.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bahia Resort Hotel, 998 West Mission Bay Drive, San Diego, CA 92109.

Contact Person: Neerja Kaushik-Basu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3198, MSC 7808, Bethesda, MD 20892, (301) 435–2306, *kaushikbasun@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Vaccines, Inflammation and Host Defense.

Date: March 18, 2019.

Time: 9:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Betty Hayden, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4206, MSC 7812, Bethesda, MD 20892, 301–435–1223, *haydenb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Gastrointestinal Physiology and Pathology.

Date: March 19, 2019.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Meenakshisundar Ananthanarayanan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge

Drive, Room 2178, Bethesda, MD 20892, 301–827–6281, *meena.ananthanarayanan@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cancer Biology.

Date: March 19, 2019.

Time: 12:30 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Juraj Bies, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 4158, MSC 7806, Bethesda, MD 20892, 301 435 1256, *biesj@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Topics in Bacterial Pathogenesis.

Date: March 20, 2019.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW, Washington, DC 20015.

Contact Person: Richard G. Kostriken, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3192, MSC 7808, Bethesda, MD 20892, 240–519–7808, *kostrikr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Nephrology Small Business Review.

Date: March 20, 2019.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Atul Sahai, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2188, MSC 7818, Bethesda, MD 20892, 301–435–1198, *sahaia@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR15–359: Biomarker Studies for Diagnosing Alzheimer's Disease and Predicting Progression.

Date: March 20, 2019.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Mary G. Schueler, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5214, MSC 7846, Bethesda, MD 20892, 301–915–6301, *marygs@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Drug Discovery for Aging, Neuropsychiatric and Neurologic Disorders.

Date: March 21–22, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bahia Resort Hotel, 998 West Mission Bay Drive, San Diego, CA 92109.

Contact Person: Aurea D. De Sousa, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Room 5186, Bethesda, MD 20892, 301–827–6829, *aurea.desousa@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowship: Infectious Diseases and Microbiology.

Date: March 21–22, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street NW, Washington, DC 20036.

Contact Person: Tamara Lyn McNealy, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3188, Bethesda, MD 20892, 301–827–2372, *tamara.mcnealy@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Cardiovascular Respiratory Sciences.

Date: March 21, 2019.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westgate Hotel, 1055 Second Avenue, San Diego, CA 92101.

Contact Person: Eugene Carstea, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4130, MSC 7818, Bethesda, MD 20892, (301) 408–9756, *carsteae@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Neural Regulation of Cancer.

Date: March 21, 2019.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Manzoor Zarger, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6208, MSC 7804, Bethesda, MD 20892, (301) 435–2477, *zargerma@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR 17–199 and PAR 17–200: Development of Pediatric Formulations and Drug Delivery Systems.

Date: March 22, 2019.

Time: 11:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Sharon S. Low, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 5104, Bethesda, MD 20892–5104, 301–237–1487, *lowss@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 8, 2019.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–02265 Filed 2–13–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse: 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 Drug Abuse Special Emphasis Panel; NIH Pathway to Independence Award (K99/R00).

Date: February 27, 2019.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center Building (NSC), 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Susan O. McGuire, Ph.D., Scientific Review Officer, Office of Extramural Policy and Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Blvd., Room 4245, Rockville, MD 20852, (301) 827–5817, *mcguireso@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: February 8, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–02277 Filed 2–13–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; 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 of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; RC2 Review.

Date: March 6, 2019.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Barbara A. Woynarowska, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 754, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 402–7172, *woynarowskab@niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: February 8, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–02247 Filed 2–13–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of 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: Microbiology, Infectious Diseases and AIDS Initial Review Group, Microbiology and Infectious Diseases B Subcommittee, MID–B March 2019.

Date: March 4–5, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Marriott Georgetown, 1221 22nd Street NW, Washington, DC 20037.

Contact Person: Ellen S. Buczko, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–451–2676, *ebuczko1@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 8, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–02272 Filed 2–13–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; 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 of Dental and Craniofacial Research Special Emphasis Panel; NIDCR Secondary Data Analysis.

Date: February 25, 2019.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIDCR Conference Room, 602 Democracy One, 6701 Democracy Blvd., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Guo He Zhang, MPH, Ph.D., Scientific Review Officer, Scientific Review Branch, Natl Institute of Dental and Craniofacial Research, National Institutes of Health, 6701 Democracy Boulevard, Suite 672, Bethesda, MD 20892, *zhanggu@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: February 8, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–02243 Filed 2–13–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Integrative Physiology of Obesity and Diabetes Study Section.

Date: February 28–March 1, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW, Washington, DC 20015.

Contact Person: Raul Rojas, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6185,

Bethesda, MD 20892, (301) 451–6319, *rojasr@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 8, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–02250 Filed 2–13–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Human Genome Research Institute Special Emphasis Panel Genomic Resources.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel; Genomic Resources.

Date: March 25, 2019.

Time: 12:30 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, 6700B Rockledge Drive, Greider Conference Room # 3189, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Ken D. Nakamura, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, 5635 Fishers Lane, Suite 4076, MSC 9306, Rockville, MD 20852, 301–402–0838, *nakamurk@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: February 8, 2019.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–02270 Filed 2–13–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Cancer, Heart, and Sleep Epidemiology B Study Section.

Date: February 25–26, 2019.

Time: 8:00 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Delfina Santa Monica Hotel, 530 West Pico Boulevard, Santa Monica, CA 90405.

Contact Person: Gniesha Yvonne Dinwiddie, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3137, Bethesda, MD 20892, *dinwiddiegy@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 8, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–02258 Filed 2–13–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; 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 Eye Institute Special Emphasis Panel; NEI Clinical and Epidemiological Applications.

Date: March 5, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro center, Bethesda, MD 20184.

Contact Person: Brian Hoshaw, Ph.D., Scientific Review Officer, National Eye Institute, National Institutes of Health, Division of Extramural Research, 5635 Fishers Lane, Suite 1300, Rockville, MD 20892, 301–451–2020, *hoshawb@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: February 8, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–02269 Filed 2–13–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of 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 of Allergy and Infectious Diseases Special Emphasis Panel.

Date: February 27–28, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The William F. Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854.

Contact Person: Lynn Rust, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, Room 3G42A, National Institutes of Health/NIAID, 5601 Fishers Lane, MSC 9823, Bethesda, MD 20892–9823, (240) 669–5069, *lrust@niaid.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 8, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–02275 Filed 2–13–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Fellowships: Genes, Genomes and Genetics.

Date: February 28–March 1, 2019.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Lystranne Alysia Maynard Smith, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, *lystranne.maynard-smith@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 8, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–02262 Filed 2–13–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of 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: Allergy, Immunology, and Transplantation Research Committee AITC May 2019 Council.

Date: February 28–March 1, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz Carlton Hotel, 1150 22nd Street NW, Washington, DC 20037.

Contact Person: James T. Snyder, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities/Room 3G31B, National Institutes of Health, NIAID, 5601 Fishers Lane MSC 9834, Bethesda, MD 20892–9834, (240) 669–5060, *james.snyder@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 8, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–02273 Filed 2–13–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6141–N–03]

Notice of a Federal Advisory Committee Meeting; Manufactured Housing Consensus Committee

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (HUD).

ACTION: Notice of a Federal Advisory Committee Meeting: Manufactured Housing Consensus Committee (MHCC).

SUMMARY: This notice sets forth the schedule and proposed agenda for a meeting of the MHCC. The meeting is open to the public and the site is accessible to individuals with disabilities. The agenda provides an opportunity for citizens to comment on the business before the MHCC.

DATES: The meeting will be held on April 30 through May 1, 2019, 9:00 a.m. to 5:00 p.m., May 2, 2019, 9:00 a.m. to 12:30 p.m. Eastern Daylight Time (EDT) daily.

ADDRESSES: The meeting will be held at the Holiday Inn Washington—Capitol, 550 C Street SW, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Teresa B. Payne, Acting Administrator, Office of Manufactured Housing Programs, Department of Housing and Urban Development, 451 7th Street SW, Room 9164, Washington, DC 20410, telephone (202) 708–6423 (this is not a toll-free number). Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: Notice of this meeting is provided in accordance with the Federal Advisory Committee Act, 5. U.S.C. App. 10(a)(2) through implementing regulations at 41 CFR 102–3.150. The MHCC was established by the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 5403(a)(3), as amended by the Manufactured Housing Improvement Act of 2000 (Pub. L. 106–569). According to 42 U.S.C. 5403, as amended, the purposes of the MHCC are to:

• Provide periodic recommendations to the Secretary to adopt, revise, and interpret the Federal manufactured housing construction and safety standards in accordance with this subsection;

• Provide periodic recommendations to the Secretary to adopt, revise, and interpret the procedural and enforcement regulations, including regulations specifying the permissible scope and conduct of monitoring in accordance with subsection (b);

• Be organized and carry out its business in a manner that guarantees a fair opportunity for the expression and consideration of various positions and for public participation.

The MHCC is deemed an advisory committee not composed of Federal employees.

Public Comment: Citizens wishing to make comments on the business of the MHCC are encouraged to register by or before Tuesday, April 15, 2019, by contacting Home Innovation Research Labs; *Attention:* Kevin Kauffman, 400 Prince Georges Blvd., Upper Marlboro, MD 20774, or email to *mhcc@homeinnovation.com* or call 1–888–602–4663. Written comments are encouraged. The MHCC strives to accommodate citizen comments to the extent possible within the time constraints of the meeting agenda. Advance registration is strongly encouraged. The MHCC will also provide an opportunity for public comment on specific matters before the MHCC.

Tentative Agenda

Tuesday, April 30, 2019

I. Call to Order—Chair & Designated Federal Officer (DFO)
II. Opening Remarks—Chair & HUD
  A. Roll Call—Administering Organization (AO)
  B. Introductions
  i. HUD Staff
  ii. Guests
  C. Administrative Announcements—DFO & AO
III. Approve Draft Minutes from September 11–13, 2018, MHCC meeting
IV. Update from Regulatory Enforcement Subcommittee or Review Current Log & Action Items
V. Review of Current Log & Action Items
VI. Break
VII. Continue Review of Current Log & Action Items
VIII. Public Comment Period
IX. Lunch
X. Continue Review of Current Log & Action Items
XI. Break
XII. Continue Review of Current Log & Action Items
XIII. Daily Wrap Up—DFO & AO
XIV. Adjourn

Wednesday, May 1, 2019

I. Reconvene Meeting—Chair & Designated Federal Officer (DFO)
II. Opening Remarks—Chair
  A. Roll Call—Administering Organization (AO)
III. Update from Technical Systems Subcommittee or Review Current Log & Action Items
IV. Break
V. Continue Review of Current Log & Action Items
VI. Public Comment
VII. Lunch
VIII. Continue Review of Current Log & Action Items
IX. Break
X. Continue Review of Current Log & Action Items or Subcommittee/Task Group Meetings
XI. Daily Wrap Up—DFO
XII. Adjourn

Thursday, May 2, 2019

I. Reconvene Meeting—Chair & Designated Federal Officer (DFO)
II. Opening Remarks—Chair
  A. Roll Call—Administering Organization (AO)
III. Continue Review of Current Log & Action Items or Subcommittee/Task Group Meetings
IV. Break
V. Continue Review of Current Log & Action Items or Subcommittee/Task Group Meetings
VI. Public Comment
VII. Daily Wrap Up—DFO & AO
VIII. Adjourn

Dated: February 8, 2019.

Brian D. Montgomery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2019–02358 Filed 2–13–19; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6141–N–01]

Notice of a Federal Advisory Committee Meeting; Manufactured Housing Consensus Committee

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (HUD).

ACTION: Notice of a Federal Advisory Committee Meeting: Manufactured Housing Consensus Committee (MHCC).

SUMMARY: This notice sets forth the schedule and proposed agenda for a teleconference meeting of the MHCC Regulatory Enforcement Subcommittee. The meeting is open to the public. The agenda provides an opportunity for citizens to comment on the business before the MHCC.

DATES: The meeting will be held on April 2, 2019, 1:00 p.m. to 4:00 p.m. Eastern Daylight Time (EDT). The teleconference numbers U.S. toll-free: 866–628–5137 and Participant Code: 4325435. To access the webinar, use the following link: *https://zoom.us/j/268794585.*

FOR FURTHER INFORMATION CONTACT: Teresa B. Payne, Acting Administrator, Office of Manufactured Housing Programs, Department of Housing and Urban Development, 451 7th Street SW, Room 9164, Washington, DC 20410, telephone (202) 708–6423 (this is not a toll-free number). Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: Notice of this meeting is provided in accordance with the Federal Advisory Committee Act, 5. U.S.C. 10(a)(2) through implementing regulations at 41 CFR 102–3.150. The MHCC was established by the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 5403(a)(3), as amended by the Manufactured Housing Improvement Act of 2000 (Pub. L. 106–569). According to 42 U.S.C. 5403, as amended, the purposes of the MHCC are to:

• Provide periodic recommendations to the Secretary to adopt, revise, and interpret the Federal manufactured housing construction and safety standards in accordance with this subsection;

• Provide periodic recommendations to the Secretary to adopt, revise, and interpret the procedural and enforcement regulations, including regulations specifying the permissible scope and conduct of monitoring in accordance with subsection (b);

• Be organized and carry out its business in a manner that guarantees a fair opportunity for the expression and consideration of various positions and for public participation.

The MHCC is deemed an advisory committee not composed of Federal employees.

Public Comment: Citizens wishing to make comments on the business of the MHCC are encouraged to register by or before Tuesday, April 2, 2019, by contacting Home Innovation Research Labs; *Attention:* Kevin Kauffman, 400 Prince Georges Blvd., Upper Marlboro,

MD 20774, or email to *mhcc@homeinnovation.com* or call 1–888–602–4663. Written comments are encouraged. The MHCC strives to accommodate citizen comments to the extent possible within the time constraints of the meeting agenda. Advance registration is strongly encouraged. The MHCC will also provide an opportunity for public comment on specific matters before the Regulatory Enforcement Subcommittee.

Tentative Agenda

Tuesday, April 2, 2019

I. Call to Order and Roll Call
II. Opening Remarks—Subcommittee Chair & Designated Federal Officer (DFO)
III. Approval of minutes from November 28, 2016 Regulatory Enforcement Subcommittee meeting
IV. New Business
- Action Item 10: To review the energy standards in the MHCSS with specific focus on the RFI from DOE.
- HUD's Office of Policy Development and Research response to MHCC's Request to Submit a Document including Comparable Cost Figures Similar to EERE–2009–BT–BC–0021 [NODA Packages—Draft Results July 2018]
- Log 198: Revise definition of manufactured home in Section 3280.2.

V. Open Discussion
VI. Public Comment
VII. Wrap Up—DFO & AO
VIII. Adjourn

Dated: February 8, 2019.

Brian D. Montgomery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2019–02355 Filed 2–13–19; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6115–N–01]

Section 209 of the Economic Growth, Regulatory Relief, and Consumer Protection Act: Initial Guidance

AGENCY: Office of the Assistant Secretary for Public and Indian Housing and the Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: On May 24, 2018, President Trump signed into law the Economic Growth, Regulatory Relief, and Consumer Protection Act (the ''Economic Growth Act''). Section 209 of the Economic Growth Act added section 38 to the United States Housing Act of 1937 and makes several amendments pertaining to small public housing agencies (PHAs) that administer 550 or fewer combined public housing units and vouchers under section 8(o) that predominantly operate in a rural area. Section 209 also requires HUD to develop new information systems for public housing consortia, and to make shared waiting list software available for voluntary use by multiple PHAs and owners of multifamily properties (hereinafter referred to in this Notice as, owners) receiving HUD assistance. Certain statutory amendments made by section 209 became effective 60 days after enactment (July 23, 2018). However, while effective, the provisions require rulemaking or guidance for implementation. The guidance in this Notice, read together with the statutory language, is intended to aid HUD program participants and the public generally in understanding the reasons for deferred action with respect to specific statutory provisions. In addition, HUD seeks comment from the public on appropriate implementation of the section 209 provisions.

DATES: *Comments Due Date:* April 15, 2019.

ADDRESSES: Interested persons are invited to submit comments regarding this Notice. All comments must refer to the proposal by name and docket number. There are two methods for submitting public comments:

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500.

2. *Electronic Submission of Comments.* Interested persons may also submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *www.regulations.gov* website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the methods specified above. Again, all submissions must refer to the docket number and title of this Notice.

No Facsimiled Comments. Facsimiled (faxed) comments are not acceptable.

Public Inspection of Public Comments. Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov.* In addition, all properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m., weekdays, at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

FOR FURTHER INFORMATION CONTACT: Harold Katsura, Program Analyst, Office of Policy, Program, and Legislative Initiatives, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW, Room 3178, Washington, DC 20410; telephone number 202–402–3042 (this is not a toll-free number). Persons with hearing or speech impairments may access these numbers via TTY by calling the Federal Relay Service, toll-free, at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Introduction

On May 24, 2018, President Trump signed the Economic Growth Act into law (Pub. L. 115–174, 132 Stat. 1296).[1] The Economic Growth Act amends the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) (1937 Act) and other housing laws to modify multiple HUD programs. The purpose of the statutory amendments is to promote economic growth, provide tailored regulatory relief, and enhance consumer protections. Section 209 of the Economic Growth Act amends Title I of the 1937 Act by adding several provisions pertaining to small PHAs that predominantly operate in a rural area as described in 12 CFR 1026.35(b)(2)(iv)(A), including

[1] The text of the Economic Growth Act, along with a summary prepared by the Congressional Research Service, can be found at *https://www.congress.gov/bill/115th-congress/senate-bill/2155.*

streamlining certain requirements related to program inspections and evaluations, corrective action requirements, environmental reviews, and energy conservation funding and financing requirements. Section 209 also requires HUD to develop new information systems for public housing consortia, and to make shared waiting list software available for voluntary use by multiple PHAs and owners receiving HUD assistance.

Certain statutory amendments made by section 209 of the Economic Growth Act became effective 60 days after enactment (July 23, 2018). However, while effective, the provisions require rulemaking or guidance for implementation. PHAs and owners may not use the provisions of the Economic Growth Act until HUD issues a rule or appropriate guidance. Further, existing HUD policies and procedures continue to apply until such time as HUD issues the necessary final implementing regulations or guidance.

The guidance in this Notice, read together with the statutory language, is intended to aid HUD program participants and the public generally in understanding the reasons for deferred action with respect to specific statutory provisions. In addition, HUD seeks comment from the public on the implementation of the section 209 provisions. HUD welcomes comment on all of the provisions discussed in this Notice and, specifically, on the topics identified for comment below. All timely comments will be considered in the development of the required rule or guidance. HUD is committed to working closely with its program participants to see that the changes made by section 209 of the Economic Growth Act are successfully implemented and that these programs are significantly improved to provide assistance to the families HUD serves.

II. Implementation Guidance and Specific Requests for Comments

A. Section 209(a). Small PHAs

Section 209(a) of the Economic Growth Act amends Title I of the 1937 Act by adding a new section 38 that defines small PHAs (*i.e.,* PHAs that administer 550 or fewer combined public housing units and vouchers under section 8(o) that predominantly operate in a rural areas, as described in 12 CFR 1026.35(b)(2)(iv)(A)). New section 38 also streamlines certain requirements related to program inspections and evaluations.

1. Section 38(a) of the 1937 Act—Definitions. New section 38(a) establishes the definitions applicable to the other provisions of section 38. Specifically, section 38(a) provides definitions for ''Housing Voucher Program,'' ''Small Public Housing Agency,'' and ''Troubled Small Public Housing Agency.''

Implementation action: The definitions require further clarification via rulemaking for implementation. For example, the definition of ''Small Public Housing Agency'' includes PHAs that administer no more than 550 dwelling units and vouchers under section 8(o) of the 1937 Act and ''predominantly operate in a rural area,'' as described in 12 CFR 1026.35(b)(2)(iv)(A).[2] This phrase ''predominately operate in a rural area'' requires further clarification and interpretation by HUD. Further, the definitions apply to statutory provisions that, as discussed below, require notice and comment rulemaking for implementation. HUD is undertaking rulemaking to implement these provisions and will address the definitions in the broader context of the rules implementing the related provisions.

Specific Topics for Comment

(i) How should HUD interpret the words ''predominantly operates'' in the phrase ''predominantly operates in a rural area''? For example, a PHA could be deemed to predominantly operate in a rural area if one or more of the following conditions apply: (1) The PHA's physical address is in a rural area (a PHA-based definition); (2) more than 50 percent of the buildings occupied by Housing Choice Voucher beneficiaries and public housing residents are in rural areas (a building-based definition); or (3) more than 50 percent of the tenants served live in rural areas (a household-based definition). Please note that HUD is not seeking comment on the definition of ''rural area'' as this is provided in statute.

(ii) How often should HUD reassess the rural nature of each PHA? For example, should HUD reclassify PHAs every time the Office of Management and Budget, the U.S. Census Bureau, or the U.S. Department of Agriculture's Economic Research Service updates data used in the definition of rural areas? Also, the ''predominately operates'' component may change when buildings are added or lost, or when tenants move under a household-based definition.

(iii) Are there other factors or approaches that HUD should consider in determining whether a PHA predominantly operates in a rural area?

(iv) Are there factors that HUD should consider in determining whether a PHA meets the criteria of administering 550 or fewer combined public housing and section 8(o) units?

2. Sections 38(c)(1) and (c)(2) of the 1937 Act—Program Inspections and Evaluations for Public Housing and Section 8 Voucher Units. Section 38(c)(1) as inserted by the Economic Growth Act requires HUD to inspect small PHA projects no less than every 3 years. Section 38(c)(1) also applies existing physical inspection standards for projects assisted under section 8 of the 1937 Act to small PHAs. Section 38(c)(2) requires small PHAs administering section 8 voucher rental assistance to make periodic physical inspections of dwelling units at least once every 3 years.[3]

Implementation action: This provision requires further review and interpretation by HUD. HUD is considering the appropriate scope of the term ''projects assisted under section 8'' as used in section 38(c)(1) and will address the subject more fully in future rulemaking. Further, as noted above, the definition of small PHA requires further consideration and implementation through rulemaking.

3. Section 38(c)(3) of the 1937 Act—Troubled Small PHAs. Section 38(c)(3) as inserted by the Economic Growth Act identifies criteria for troubled small PHAs and establishes an appeals process under which a small PHA may dispute a designation as a troubled small PHA. The new section also establishes requirements for Corrective Action Agreements under which designated troubled small PHAs shall undertake actions to correct identified deficiencies.

Implementation action: Section 38(c)(3) of the 1937 Act requires HUD to issue regulations to establish the appeals process and determine how Corrective Action Agreements may be tailored for individual troubled

[2] The referenced regulations are the Truth in Lending (Regulation Z) regulations issued by the Bureau of Consumer Financial Protection and codified at 12 CFR part 1026. The regulations setting forth the definition of rural area can be found at: *https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=2af425fb88e5aca2c09e0b4adc8a50a6&mc=true&n=pt12.9.1026&r=PART&ty=HTML#se12.9.1026_135.*

[3] Sections 38(c)(1) (for public housing) and (c)(2) (for Section 8 voucher units) also clarify that HUD or the PHA must continue conducting lead safety inspections when applicable in accordance with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4822). These provisions emphasize following existing requirements and therefore do not require further action for implementation. Safety inspection requirements under the Lead-Based Paint Poisoning Prevention Act can be found at: *https://www.gpo.gov/fdsys/pkg/USCODE-2009-title42/html/USCODE-2009-title42-chap63-subchapIII-sec4822.htm.*

properties. HUD is developing these regulations.

4. Section 38(d) of the 1937 Act—Reduction of Administrative Burdens. Section 38(d)(1) as inserted by the Economic Growth Act exempts small PHAs from any environmental review requirements with respect to development or modernization projects costing no more than $100,000. Section 38(d)(2) requires HUD, by regulation, to streamline procedures for environmental reviews for those small PHAs with development or modernization projects costing more than $100,000.

Implementation action: Section 38(d)(2) requires HUD to issue regulations to determine criteria for applicable development and modernization projects. By statute, section 38(d)(2) requires HUD to issue regulations to establish streamlined procedures for environmental reviews. HUD is developing these regulations.

Specific Topic for Comment

How should HUD define the $100,000 total cost threshold for development or modernization project costs? For example, what types of costs should be included? Should costs associated with disposition and conversion actions be treated as development or modernization costs?

B. Section 209(b). Energy Conservation

Section 209(b) of the Economic Growth Act amends the Operating Fund requirements in section 9(e)(2) of the 1937 Act to authorize a small PHA (as defined in the new section 38(a), discussed above) to elect to be paid for utility and waste management costs for a period of not more than 20 years based on its average annual consumption during the preceding 3-year period.

Implementation action: Section 209(b) requires rulemaking to modify existing procedures in a manner that is least disruptive to the existing Operating Fund formula funding cycle, as well as to the policies and procedures that currently govern utility reimbursements, savings, third party agreements and financing, while at the same time enabling small PHAs to utilize the additional flexibility provided by section 209. For these provisions, PHAs and owners may not use the provisions of the Economic Growth Act until HUD issues a rule. Further, and as discussed above, the new definition of small PHA necessitates further consideration by HUD and implementation through rulemaking.

Specific Topics for Comment

(i) The statute states that: ''The Secretary shall make an initial one-time adjustment in the consumption base level to account for differences in the heating degree day average over the most recent 20-year period compared to the average in the consumption base level.'' What are good sources for obtaining 20 years of heating degree day data? What resources, computer analysis programs, databases, or websites could HUD consult to determine utility consumption adjustments to account for temperature variations relative to the most recent 20 years?

(ii) The statute permits PHAs to use savings for either Capital Fund or Operating Fund eligible expenses. PHAs with less than 250 units can follow PIH Notice 2016–18 [4] or a successor notice on the flexible use of operating funds. To the extent that PHAs with more than 250 units use this flexibility to expend operating funds for capital purposes, they will need to document the savings, and track the expenditure of the funds. What methods for tracking and reporting on the expenditure of such operating funds would enable monitoring, but limit burden to PHAs?

C. Section 209(c). Reporting by Agencies Operating in Consortia

Section 209(c) of the Economic Growth Act requires HUD to develop and deploy electronic information systems to accommodate full consolidated reporting by PHAs electing to act in consortia.

Implementation action: This provision requires HUD to develop and deploy electronic information systems no later than 180 days after enactment of the Economic Growth Act (November 20, 2018). HUD is developing such electronic information systems and will keep program participants updated as necessary to facilitate transition to the new systems.

Specific topics for comment: What are the current limitations with HUD's systems that prevent full consolidated reporting by PHAs engaged in consortia? What improvements to HUD's systems should HUD consider for such reporting?

D. Section 209(e). Shared Waiting Lists

As discussed above, section 209(e) of the Economic Growth Act requires HUD to make available one or more software programs that will facilitate the voluntary use of shared waiting lists by PHAs and owners receiving HUD assistance. While the requirement that HUD make available software programs is self-implementing, HUD is also required to publish guidance for implementing such lists.

Implementation action: This provision requires HUD to make available software and publish guidance no later than one year after enactment of the Economic Growth Act (May 24, 2019). HUD is exploring options for implementing the required software and will publish required guidance accordingly.

Specific Topics for Comment

(i) Because the statute refers to software that supports the use of ''shared waiting lists'' by PHAs and owners receiving HUD assistance, HUD seeks public input on the definition of a ''shared waiting list.'' HUD is considering defining ''shared waiting list software'' as software that enables a household to submit a single application to get on multiple waiting lists. One of the most commonly cited examples of a shared waiting list is the Massachusetts Section 8 Housing Choice Voucher Centralized Waiting List that serves about 100 PHAs. Despite its name, the Centralized Waiting List is not a single waiting list used by the participating PHAs. Instead, this is a single application system that generates a unique waiting list for each PHA by sorting all applicants based on the PHA's preferences, which typically include a local preference for households living or working in the PHA's jurisdiction.

(ii) What types of PHAs and owners might be the best candidates for a shared waiting list?

(iii) Do owners receiving HUD assistance have unique needs that may make it difficult for them to use a shared waiting list?

(iv) Would there be a need for additional software security in providing access to, and using, a shared waiting list?

(v) HUD also encourages the submission of examples where PHAs or owners have used shared waiting lists and seeks opinions regarding the need for HUD to provide software support for this function and what form this support might take.

Dated: February 11, 2019.

Dominique G. Blom,

General Deputy Assistant Secretary for Public and Indian Housing.

Brian D. Montgomery,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 2019–02359 Filed 2–13–19; 8:45 am]

BILLING CODE 4210–67–P

[4] Available at: *https://www.hud.gov/sites/documents/PIH-2016-18.PDF.*

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6141–N–02]

Notice of a Federal Advisory Committee Meeting; Manufactured Housing Consensus Committee

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (HUD).

ACTION: Notice of a Federal Advisory Committee Meeting: Manufactured Housing Consensus Committee (MHCC).

SUMMARY: This notice sets forth the schedule and proposed agenda for a teleconference meeting of the MHCC Technical Systems Subcommittee. The meeting is open to the public. The agenda provides an opportunity for citizens to comment on the business before the MHCC.

DATES: The meeting will be held on April 3, 2019, 1:00 p.m. to 4:00 p.m. Eastern Daylight Time (EDT). The teleconference numbers are U.S. toll-free: 866–628–5137 and Participant Code: 4325435. To access the webinar, use the following link: *https://zoom.us/j/252800116.*

FOR FURTHER INFORMATION CONTACT: Teresa B. Payne, Acting Administrator, Office of Manufactured Housing Programs, Department of Housing and Urban Development, 451 7th Street SW, Room 9164, Washington, DC 20410, telephone (202) 708–6423 (this is not a toll-free number). Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: Notice of this meeting is provided in accordance with the Federal Advisory Committee Act, 5. U.S.C. App. 10(a)(2) through implementing regulations at 41 CFR 102–3.150. The MHCC was established by the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 5403(a)(3), as amended by the Manufactured Housing Improvement Act of 2000, (Pub. L. 106–569). According to 42 U.S.C. 5403, as amended, the purposes of the MHCC are to:

- Provide periodic recommendations to the Secretary to adopt, revise, and interpret the Federal manufactured housing construction and safety standards in accordance with this subsection;
- Provide periodic recommendations to the Secretary to adopt, revise, and interpret the procedural and enforcement regulations, including regulations specifying the permissible scope and conduct of monitoring in accordance with subsection (b);
- Be organized and carry out its business in a manner that guarantees a fair opportunity for the expression and consideration of various positions and for public participation.

The MHCC is deemed an advisory committee not composed of Federal employees.

Public Comment: Citizens wishing to make comments on the business of the MHCC are encouraged to register by or before Wednesday, April 3, 2019, by contacting Home Innovation Research Labs; *Attention:* Kevin Kauffman, 400 Prince Georges Blvd., Upper Marlboro, MD 20774, or email to *mhcc@homeinnovation.com* or call 1–888–602–4663. Written comments are encouraged. The MHCC strives to accommodate citizen comments to the extent possible within the time constraints of the meeting agenda. Advance registration is strongly encouraged. The MHCC will also provide an opportunity for public comment on specific matters before the Technical Systems Subcommittee.

Tentative Agenda

Wednesday, April 3, 2019

I. Call to Order and Roll Call

II. Opening Remarks—Subcommittee Chair & Designated Federal Officer (DFO)

III. Approval of minutes from October 25–26, 2016 Technical System Subcommittee meeting

IV. New Business

- Action Item 9: Frost Free Foundation Issue
- Deregulation Comments on Frost Free Foundation: DRC 11, DRC 13, DRC 14, DRC 16, DRC 31, DRC 150, DRC 151, DRC 152, DRC 153, DRC 154, DRC 156, DRC 157, DRC 158, DRC 169, DRC 170, DRC 171, DRC 172, DRC 173, DRC 174, DRC 175, DRC 176, DRC 177, DRC 178, DRC 179

V. Open Discussion

VI. Public Comment

VII. Wrap Up—DFO & AO

VIII. Adjourn

Dated: February 8, 2019.

Brian D. Montgomery,

Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. 2019–02357 Filed 2–13–19; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2018–N133; FXES11140200000–189–FF02ENEH00]

Incidental Take Permit Applications To Participate in American Burying-Beetle Amended Oil and Gas Industry Conservation Plan in Oklahoma

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for public comments.

SUMMARY: Under the Endangered Species Act, we, the U.S. Fish and Wildlife Service, invite the public to comment on federally listed American Burying Beetle incidental take permit (ITP) applications. The applicants anticipate American Burying Beetle take as a result of impacts to Oklahoma habitat the species uses for breeding, feeding, and sheltering. The take would be incidental to the applicants' activities associated with oil and gas well field and pipeline infrastructure (gathering, transmission, and distribution), including geophysical exploration (seismic), construction, maintenance, operation, repair, decommissioning, and reclamation. If approved, the permits would be issued under the approved *American Burying Beetle Amended Oil and Gas Industry Conservation Plan (ICP) Endangered Species Act Section 10(a)(1)(B) Permit Issuance in Oklahoma.*

DATES: To ensure consideration, we must receive written comments on or before March 18, 2019.

ADDRESSES: You may obtain copies of all documents and submit comments on the applicants' ITP applications by one of the following methods. Please refer to the proposed permit number when requesting documents or submitting comments.

- *Email: fw2_hcp_permits@fws.gov.*
- *U.S. Mail:* U.S. Fish and Wildlife Service, Endangered Species—HCP Permits, P.O. Box 1306, Room 6093, Albuquerque, NM 87103.

FOR FURTHER INFORMATION CONTACT: Marty Tuegel, Branch Chief, by U.S. mail at U.S. Fish and Wildlife Service, Environmental Review Division, P.O. Box 1306, Room 6078, Albuquerque, NM 87103; by telephone at 505–248–6651; or via the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Introduction

Under the Endangered Species Act, as amended (ESA; 16 U.S.C. 1531 *et seq.*),

we, the U.S. Fish and Wildlife Service, invite the public to comment on incidental take permit (ITP) applications to take the federally listed American Burying Beetle (*Nicrophorus americanus*) during oil and gas well field infrastructure geophysical exploration (seismic) and construction, maintenance, operation, repair, and decommissioning, as well as oil and gas gathering, transmission, and distribution pipeline infrastructure construction, maintenance, operation, repair, decommissioning, and reclamation in Oklahoma.

If approved, the permits would be issued to the applicants under the *American Burying Beetle Amended Oil and Gas Industry Conservation Plan (ICP) Endangered Species Act Section 10(a)(1)(B) Permit Issuance in Oklahoma.* The original ICP was approved on May 21, 2014, and the ''no significant impact'' finding notice was published in the **Federal Register** on July 25, 2014 (79 FR 43504). The draft amended ICP was made available for comment on March 8, 2016 (81 FR 12113), and approved on April 13, 2016. The ICP and the associated environmental assessment/finding of no significant impact are available on our website at *http://www.fws.gov/southwest/es/oklahoma/ABBICP.* However, we are no longer taking comments on these finalized, approved documents.

Applications Available for Review and Comment

We invite local, state, Tribal, and Federal agencies, and the public to comment on the following applications under the ICP for incidentally taking the federally listed American Burying Beetle. Please refer to the proposed permit number (TE05384D or TE08500D) when requesting application documents and when submitting comments. Documents and other information the applicants submitted are available for review, subject to Privacy Act (5 U.S.C. 552a) and Freedom of Information Act (5 U.S.C. 552) requirements.

Permit No. TE05384D

Applicant: Foundation Energy Management, LLC, Addison, TX.

Applicant requests a permit for oil and gas upstream and midstream production, including oil and gas well field infrastructure geophysical exploration (seismic) and construction, maintenance, operation, repair, and decommissioning, as well as oil and gas gathering, transmission, and distribution pipeline infrastructure construction, maintenance, operation, repair, decommissioning, and reclamation in Oklahoma.

Permit No. TE08500D

Applicant: Sanguine Gas Exploration, LLC, Tulsa, OK.

Applicant requests a permit for oil and gas upstream and midstream production, including oil and gas well field infrastructure geophysical exploration (seismic) and construction, maintenance, operation, repair, and decommissioning, as well as oil and gas gathering, transmission, and distribution pipeline infrastructure construction, maintenance, operation, repair, decommissioning, and reclamation in Oklahoma.

Public Availability of Comments

Written comments we receive become part of the public record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware your entire comment—including your personal identifying information—may be made publicly available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Authority

We provide this notice under the ESA, section 10(c) (16 U.S.C. 1531 *et seq.*), and its implementing regulations (50 CFR 17.22) and the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1506.6).

Dated: October 22, 2018.

Amy Lueders,

Regional Director, Southwest Region.

[FR Doc. 2019–02331 Filed 2–13–19; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR02054000, 19XR0687NA, RX.18527901.3000000]

Central Valley Project Improvement Act Water Management Plans

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability.

SUMMARY: The Bureau of Reclamation has made available to the public the Water Management Plans for 15 entities. For the purpose of this announcement, Water Management Plans (Plans) are considered the same as Water Conservation Plans. Reclamation is publishing this notice in order to allow the public an opportunity to review the Plans and comment on the preliminary determinations.

DATES: Submit written comments on the preliminary determinations on or before March 18, 2019.

ADDRESSES: Send written comments to Ms. Charlene Stemen, Bureau of Reclamation, 2800 Cottage Way, CGB–400, Sacramento, CA 95825; or via email at *cstemen@usbr.gov.*

FOR FURTHER INFORMATION CONTACT: To be placed on a mailing list for any subsequent information, please contact Ms. Charlene Stemen at *cstemen@usbr.gov,* or at 916–978–5218 (TDD 978–5608).

SUPPLEMENTARY INFORMATION: Section 3405(e) of the Central Valley Project Improvement Act (Title 34 Pub. L. 102–575), requires the Secretary of the Interior to, amongst other things, ''develop criteria for evaluating the adequacy of all water conservation plans'' developed by certain contractors. According to Section 3405(e)(1), these criteria must promote, ''the highest level of water use efficiency reasonably achievable by project contractors using best available cost-effective technology and best management practices.'' In accordance with this legislative mandate, the Bureau of Reclamation developed and published the Criteria for Evaluating Water Management Plans (Criteria). Each of the 15 entities listed below developed a Plan that Reclamation evaluated and preliminarily determined meets the requirements of the Criteria. The following Plans are available for review:

- Arvin Edison Water Storage District
- Bella Vista Water District
- Carpenteria Valley Water District
- City of Redding
- Central California Irrigation District
- Columbia Canal Company
- Firebaugh Canal Water District
- Glide Water District
- Kanawha Water District
- Lower Tule River Irrigation District
- Orange Cove Irrigation District
- Pixley Irrigation District
- San Luis Canal Company
- Tea Pot Dome Water District
- West Stanislaus Irrigation District

We invite the public to comment on our preliminary (*i.e.,* draft) determination of Plan adequacy.

A copy of these Plans will be available for review at Reclamation's Mid-Pacific Regional Office, 2800 Cottage Way, CGB–410, Sacramento, CA 95825. If you wish to review a copy of these Plans, please contact Ms. Stemen.

Dated: February 5, 2019.

Richard Woodley,

Regional Resources Manager, Mid-Pacific Region, Bureau of Reclamation.

[FR Doc. 2019–02226 Filed 2–13–19; 8:45 am]

BILLING CODE 4332–90–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Integrated Circuits and Products Containing the Same, DN 3358;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov,* and 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 United States International Trade Commission (USITC) at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received an amended complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Tela Innovations, Inc., on February 7, 2019. The original complaint was filed on December 19, 2018 and a notice of receipt of complaint; solicitation of comments relating to the public interest was published in the **Federal Register** on February 7, 2019.[1] The amended complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain integrated circuits and products containing the same. The complaint names as respondents: Acer, Inc. of Taiwan; Acer America Corporation of San Jose, CA; AsusTek Computer Inc. of Taiwan; Asus Computer International of Fremont, CA; Intel Corporation of Santa Clara, CA; Lenovo Group Ltd. of China; Lenovo (United States) Inc. of Morrisville, NC; Micro-Star International Co., Ltd. of Taiwan; and MSI Computer Corp. of City of Industry, CA. The amended complaint alleges infringement of U.S. Patent Nos. 7,943,966; 7,948,012; 10,141,334; 10,141,335; and 10,186,523. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders and impose a bond during the 60-day review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues should be filed no later than by close of business nine calendar days after the date of publication of this notice in the **Federal Register**. Complainant may file a reply to any written submission no later than the date on which complainant's reply would be due under § 210.8(c)(2) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(c)(2)).

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to § 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 3358'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures[2]). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the

[1] Due to delays caused by the lapse in appropriations on December 22, 2018, the Commission extended the deadlines for comments on any public interest issues raised by the complaint or complainant's filing submitted pursuant to the Commission's Rules of Practice and Procedure.

[2] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[3] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[4]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: February 11, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–02305 Filed 2–13–19; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–944 (Modification Proceeding)]

Certain Network Devices, Related Software and Components Thereof (I); Notice of a Commission Determination Not To Suspend or Modify the Remedial Orders; Termination of the Modification Proceeding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to modify or suspend the remedial orders in the above-captioned investigation. The modification proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Amanda P. Fisherow, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2737. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted the underlying investigation on January 27, 2015, based on a complaint filed on behalf of Cisco Systems, Inc. (''Cisco'') of San Jose, California. 80 *FR* 4314–15 (Jan. 27, 2015). The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain network devices, related software and components thereof by reason of infringement of certain claims of U.S. Patent No. 7,162,537 (''the '537 patent''); U.S. Patent No. 8,356,296; U.S. Patent No. 7,290,164 (''the '164 patent''); U.S. Patent No. 7,340,597; U.S. Patent No. 6,741,592 (''the '592 patent''); and U.S. Patent No. 7,200,145, and alleges that an industry in the United States exists as required by subsection (a)(2) of section 337. The notice of investigation named Arista Networks, Inc. (''Arista'') of Santa Clara, California as the respondent. A Commission investigative attorney (''OUII'') is participating in the investigation.

On June 23, 2016, the Commission found that a Section 337 violation had occurred as to the '537, '592, and '145 patents and therefore issued a limited exclusion order and a cease and desist order against Arista. 81 FR 42375–76 (June 29, 2016).

On August 28, 2018, Cisco filed a petition pursuant to Commission Rule 210.76, 19 CFR 210.76, to suspend the remedial orders issued in this investigation based on a settlement agreement between Cisco and Arista. Specifically, Cisco requested that the Commission suspend the remedial orders subject to Arista's continued compliance with settlement provisions relating to the removal of certain features from its redesigned products. Neither Arista nor OUII filed a response.

On October 22, 2018, the Commission instituted this modification proceeding and requested briefing from the parties on their positions regarding modification of the existing remedial orders to expressly exempt the Arista redesigned products from the scope of the remedial orders. 83 FR 54137 (October 26, 2018). The parties filed their initial submissions on November 1, 2018. On November 8, 2018, Cisco and Arista filed responsive submissions.

Having considered Cisco's petition and the briefing from the parties, the Commission has determined not to suspend the remedial orders as requested by Cisco. The Commission has only suspended or temporarily rescinded its orders in very limited circumstances involving adjudication in other tribunals. The Commission has considered the parties' filings and declines to extend the rare circumstances in which it suspends or temporarily rescinds its remedial orders to the circumstances presented in this investigation. For various reasons, the redesigned products are not currently being excluded under the limited exclusion order.

The private parties are not precluded from filing a future petition requesting that the Commission modify its remedial orders including to exempt the redesigned products.

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: February 8, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–02290 Filed 2–13–19; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to The National Cooperative Research and Production Act of 1993—Petroleum Environmental Research Forum

Notice is hereby given that, on January 29, 2019, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Petroleum Environmental Research Forum (''PERF'') has filed written

[3] All contract personnel will sign appropriate nondisclosure agreements.

[4] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Veolia Water Belgium, Brussels, BELGIUM, has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PERF intends to file additional written notifications disclosing all changes in membership.

On February 10, 1986, PERF filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 14, 1986 (51 FR 8903).

The last notification was filed with the Department on May 31, 2018. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on July 9, 2018 (83 FR 31775).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2019–02302 Filed 2–13–19; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Notice of Extension to Public Comment Period for Consent Decree Under the Clean Air Act

On December 14, 2018, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Western District of Arkansas in the lawsuit entitled *United States, et al.* v. *Georgia Pacific Chemicals LLC, Georgia Pacific Consumer Operations LLC, Case No. 1:18–cv–01076–SOH.*

The proposed Consent Decree resolves the United States' and the Arkansas Department of Environmental Quality's (''ADEQ'') claims under Sections 113(b)(2) and 112(r) of the Clean Air Act (''CAA''), 42 U.S.C. 7413(b)(2) and 7412(r), as well as Arkansas Code Annotated §§ 8–4–103 *et seq.,* that Settling Defendants violated the New Source Performance Standards, National Emission Standards for Hazardous Air Pollutants and the Chemical and Accident Prevention Provisions for Air Programs at their chemical and paper/pulp plants located in Crossett, Arkansas. Under the proposed Consent Decree, Settling Defendants have agreed to pay a penalty of $600,000, implement three Supplemental Environmental Projects valued at $1.8 million and implement a mitigation project valued at $2.9 million to resolve the governments' claims.

Notice of the lodging of the proposed Consent Decree was originally published in the **Federal Register** on December 20, 2018. *See* 83 FR 65363 (Dec. 20, 2018). The publication of the original notice opened a thirty (30) day period for public comment on the Consent Decree that ended on January 22, 2019. The publication of the current notice extends the period for public comment on the Consent Decree to February 28, 2019.

Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *Georgia Pacific Chemicals LLC, Georgia Pacific Consumer Operations LLC, Case No. 1:18–cv–01076–SOH,* D.J. Ref. No. 90–5–2–1–11705. All comments must be submitted no later than February 28, 2019. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department website: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $13.75 (25 cents per page reproduction cost) payable to the United States Treasury.

Thomas Carroll,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2019–02353 Filed 2–13–19; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Air Act

On February 8, 2019, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Northern District of Alabama in the lawsuit entitled *United States et al.* v. *Drummond Company, Inc. d/b/a ABC Coke (Drummond),* Civil Action No. 2:19–cv–00240–AKK. The United States is joined in this matter by its co-plaintiff the Jefferson County Board of Health (JCBH).

This case relates to alleged releases of benzene from Drummond's coke by-product recovery plant in Tarrant, Alabama (Facility). The case involves claims for civil penalties and injunctive relief under the Clean Air Act, 42 U.S.C. 7401 *et seq.,* and its implementing regulations known as National Emission Standards for Hazardous Air Pollutants (NESHAPs), including 40 CFR part 61, subpart L (Benzene Emissions from Coke By-product Recovery Plants), Subpart V (Equipment Leaks and Fugitive Emissions), and Subpart FF (Benzene Waste Operations), as well as related claims under laws promulgated by the Jefferson County Board of Health. The settlement resolves the alleged claims by requiring Drummond to, among other things: (1) Pay a civil penalty of $775,000 for the past alleged violations to be split equally between the United States and JCBH; (2) undertake fixes to the Facility to address the alleged violations; (3) implement a leak detection and repair program to ensure compliance and reduce potential future fugitive benzene emissions; and (4) implement a supplemental environmental project of two years of semi-annual use of an infrared camera as part of leak detection efforts at a cost of $16,000.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States et al.* v. *Drummond Company, Inc. d/b/a ABC Coke,* D.J. Ref. No. 90–5–2–1–10717. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*

To submit comments:	Send them to:
By mail	Assistant Attorney General; U.S. DOJ—ENRD; P.O. Box 7611; Washington, DC 20044–7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $10.00 (25 cents per page reproduction cost) payable to the United States Treasury.

Henry Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2019–02283 Filed 2–13–19; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2006–0028]

MET Laboratories, Inc.: Grant of Expansion of Recognition and Modification to the NRTL Program's List of Appropriate Test Standards

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces its final decision to expand the scope of recognition for MET Laboratories, Inc., as a Nationally Recognized Testing Laboratory (NRTL). Additionally, OSHA announces the addition of one test standard to the NRTL Program's List of Appropriate Test Standards.

DATES: The expansion of the scope of recognition becomes effective on February 14, 2019.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor; telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor; telephone: (202) 693–2110; email: *robinson.kevin@dol.gov.* OSHA's web page includes information about the NRTL Program (see *http://www.osha.gov/dts/otpca/nrtl/index.html*).

SUPPLEMENTARY INFORMATION:

I. Notice of Final Decision

OSHA hereby gives notice of the expansion of the scope of recognition of MET Laboratories, Inc. (MET), as a NRTL. MET's expansion covers the addition of one test standards to its scope of recognition. Additionally, OSHA announces the addition of one test standard to the NRTL Program's List of Appropriate Test Standards.

OSHA recognition of a NRTL signifies that the organization meets the requirements specified by 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products properly approved by the NRTL to meet OSHA standards that require testing and certification of the products.

The agency processes applications by a NRTL for initial recognition, or for expansion or renewal of this recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides a preliminary finding and, in the second notice, the agency provides the final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL that details its scope of recognition. These pages are available from the agency's website at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

MET submitted an application, dated January 29, 2016 (OSHA–2006–0028–0046), to expand its recognition to include one additional test standard. OSHA staff performed a detailed analysis of the application packet and reviewed other pertinent information. OSHA did not perform any on-site reviews in relation to this application.

OSHA published the preliminary notice announcing MET's expansion application and proposed addition to the NRTL List of Appropriate Test Standards in the **Federal Register** on July 24, 2018 (83 FR 35026). The agency requested comments by August 8, 2018, but it received no comments in response to this notice. OSHA now is proceeding with this final notice to grant expansion of MET's scope of recognition.

To obtain or review copies of all public documents pertaining to MET's application, go to *http://www.regulations.gov* or contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–3653, Washington, DC 20210. Docket No. OSHA–2006–0028 contains all materials in the record concerning MET's recognition.

II. Final Decision and Order

OSHA staff examined MET's expansion application, the capability to meet the requirements of the test standards, and other pertinent information. Based on a review of this evidence, OSHA finds that MET meets the requirements of 29 CFR 1910.7 for expansion of the recognition, subject to the specified limitation and conditions listed. OSHA, therefore, is proceeding with this final notice to grant MET's scope of recognition. OSHA limits the expansion of MET's recognition to testing and certification of products for demonstration of conformance to the test standard listed, in Table 1.

TABLE 1—LIST OF APPROPRIATE TEST STANDARD FOR INCLUSION IN MET'S NRTL SCOPE OF RECOGNITION

Test standard	Test standard title
UL 1598C	Standard for Light Emitting Diode (LED) Retrofit Luminaire Conversion Kits.

In this notice, OSHA also announces the addition of a new test standard to the NRTL Program's List of Appropriate Test Standards. Table 2, below, lists the test standard that is new to the NRTL Program. OSHA has determined that this test standard is an appropriate test standard and will include it in the NRTL Program's List of Appropriate Test Standards.

TABLE 2—TEST STANDARD OSHA IS ADDING TO THE NRTL PROGRAM'S LIST OF APPROPRIATE TEST STANDARDS

Test standard	Test standard title
UL 1598C	Standard for Light Emitting Diode (LED) Retrofit Luminaire Conversion Kits.

OSHA's recognition of any NRTL for a particular test standard is limited to equipment or materials for which OSHA standards require third-party testing and certification before using them in the workplace. Consequently, if a test standard also covers any products for which OSHA does not require such testing and certification, a NRTL's scope of recognition does not include these products.

The American National Standards Institute (ANSI) may approve the test standards listed above as American National Standards. However, for convenience, the use of the designation of the standards-developing organization for the standard as opposed to the ANSI designation may occur. Under the NRTL Program's policy (see OSHA Instruction CPL 1–0.3, Appendix C, paragraph XIV), any NRTL recognized for a particular test standard may use either the proprietary version of the test standard or the ANSI version of that standard. Contact ANSI to determine whether a test standard is currently ANSI-approved.

A. Conditions

In addition to those conditions already required by 29 CFR 1910.7, MET must abide by the following conditions of the recognition:

1. MET must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major change in its operations as a NRTL, and provide details of the change(s);
2. MET must meet all the terms of its recognition and comply with all OSHA policies pertaining to this recognition; and
3. MET must continue to meet the requirements for recognition, including all previously published conditions on MET's scope of recognition, in all areas for which it has recognition.

Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the scope of recognition of MET, subject to the limitation and conditions specified above.

III. Authority and Signature

Loren Sweatt, Deputy Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice. Accordingly, the Agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR 1910.7.

Signed at Washington, DC, on February 8, 2019.

Loren Sweatt,

Acting Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2019–02239 Filed 2–13–19; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meetings; National Science Board

The National Science Board, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended, (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice of revisions to an announcement of meetings for the transaction of National Science Board business.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 84 FR 2933–34, published on Friday, February 8, 2019.

PREVIOUSLY ANNOUNCED SESSION CANCELLED:

Plenary Board

February 12, 2019

Open Session: 1:00–2:00 p.m.

- Chair's Opening Remarks and Introductions
  - Mr. Chris Liddell, White House Deputy Chief of Staff for Policy Coordination

This session has been CANCELLED, per vote of the National Science Board.

ADDITIONAL TIME FOR COMMITTEE SESSION:

Committee on Awards and Facilities (A&F)

February 12, 2019

Closed session: 9:30 a.m.–12:00 noon

- Committee Chair's Opening Remarks
- Approval of Prior Minutes
- Action Item: Antarctic Infrastructure Modernization for Science (AIMS)
- Action Item: International Ocean Discovery Program (IODP)
- Update on Cornell High Energy Synchrotron Source
- Context Item: Green Bank Observatory
- Update on National Ecological Observatory Network

This session will be RECONVENED DURING THE TIME 1:15 p.m. TO 2:00 p.m. February 12, 2019, per vote of the National Science Board.

CONTACT PERSON FOR MORE INFORMATION: Brad Gutierrez, *bgutierr@nsf.gov,* 703/292–7000. Please refer to the National Science Board website for additional information. Meeting information and schedule updates (time, place, subject matter, and status of meeting) may be found at *http://www.nsf.gov/nsb/meetings/notices.jsp#sunshine.*

Chris Blair,

Executive Assistant, National Science Board Office.

[FR Doc. 2019–02539 Filed 2–12–19; 4:15 pm]

BILLING CODE 7555–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:

Form T–6, SEC File No. 270–344, OMB Control No. 3235–0391

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Form T–6 (17 CFR 269.9) is an application for eligibility and qualification for a foreign person or corporation under the Trust Indenture Act of 1939 (15 U.S.C. 77aaa *et seq.*). Form T–6 provides the basis for determining whether a foreign person or corporation is eligible to serve as a trustee for qualified indenture. Form T–6 is filed on occasion. The information collected must be filed with the Commission and is publicly available. Form T–6 takes approximately 17 burden hours per response and is filed by approximately one respondent annually. We estimate that 25% of the 17 hours (4.25 hours) is prepared by the filer for an annual reporting burden of 4 hours (4.25 hours per response × 1 response).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following website, *www.reginfo.gov.* Comments should be

directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Lindsay.M.Abate@omb.eop.gov*; and (ii) Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Candace Kenner, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: February 11, 2019.

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–02312 Filed 2–13–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:

Rule 17j–1, SEC File No. 270–239, OMB Control No. 3235–0224

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Conflicts of interest between investment company personnel (such as portfolio managers) and their funds can arise when these persons buy and sell securities for their own accounts (''personal investment activities''). These conflicts arise because fund personnel have the opportunity to profit from information about fund transactions, often to the detriment of fund investors. Beginning in the early 1960s, Congress and the Securities and Exchange Commission (''Commission'') sought to devise a regulatory scheme to effectively address these potential conflicts. These efforts culminated in the addition of section 17(j) to the Investment Company Act of 1940 (the ''Investment Company Act'') (15 U.S.C. 80a–17(j)) in 1970 and the adoption by the Commission of rule 17j–1 (17 CFR 270.17j–1) in 1980.[1] The Commission proposed amendments to rule 17j–1 in 1995 in response to recommendations made in the first detailed study of fund policies concerning personal investment activities by the Commission's Division of Investment Management since rule 17j–1 was adopted. Amendments to rule 17j–1, which were adopted in 1999, enhanced fund oversight of personal investment activities and the board's role in carrying out that oversight.[2] Additional amendments to rule 17j–1 were made in 2004, conforming rule 17j–1 to rule 204A–1 under the Investment Advisers Act of 1940 (15 U.S.C. 80b), avoiding duplicative reporting, and modifying certain definitions and time restrictions.[3]

Section 17(j) makes it unlawful for persons affiliated with a registered investment company (''fund'') or with the fund's investment adviser or principal underwriter (each a ''17j–1 organization''), in connection with the purchase or sale of securities held or to be acquired by the investment company, to engage in any fraudulent, deceptive, or manipulative act or practice in contravention of the Commission's rules and regulations. Section 17(j) also authorizes the Commission to promulgate rules requiring 17j–1 organizations to adopt codes of ethics.

In order to implement section 17(j), rule 17j–1 imposes certain requirements on 17j–1 organizations and ''Access Persons''[4] of those organizations. The rule prohibits fraudulent, deceptive or manipulative acts by persons affiliated with a 17j–1 organization in connection with their personal securities transactions in securities held or to be acquired by the fund. The rule requires each 17j–1 organization, unless it is a money market fund or a fund that does not invest in Covered Securities,[5] to: (i) Adopt a written codes of ethics, (ii) submit the code and any material changes to the code, along with a certification that it has adopted procedures reasonably necessary to prevent Access Persons from violating the code of ethics, to the fund board for approval, (iii) use reasonable diligence and institute procedures reasonably necessary to prevent violations of the code, (iv) submit a written report to the fund describing any issues arising under the code and procedures and certifying that the 17j–1 entity has adopted procedures reasonably necessary to prevent Access Persons form violating the code, (v) identify Access Persons and notify them of their reporting obligations, and (vi) maintain and make available to the Commission for review certain records related to the code of ethics and transaction reporting by Access Persons.

The rule requires each Access Person of a fund (other than a money market fund or a fund that does not invest in Covered Securities) and of an investment adviser or principal underwriter of the fund, who is not subject to an exception,[6] to file: (i)

[1] Prevention of Certain Unlawful Activities with Respect to Registered Investment Companies, Investment Company Act Release No. 11421 (Oct. 31, 1980) (45 FR 73915 (Nov. 7, 1980)).

[2] Personal Investment Activities of Investment Company Personnel, Investment Company Act Release No. 23958 (Aug. 20, 1999) (64 FR 46821 (Aug. 27, 1999)).

[3] Investment Adviser Codes of Ethics, Investment Advisers Act Release No. 2256 (Jul. 2, 2004) (69 FR 41696 (Jul. 9, 2004)).

[4] Rule 17j–1(a)(1) defines an ''access person'' as ''Any Advisory Person of a Fund or of a Fund's investment adviser. If an investment adviser's primary business is advising Funds or other advisory clients, all of the investment adviser's directors, officers, and general partners are presumed to be Access Persons of any Fund advised by the investment adviser. All of a Fund's directors, officers, and general partners are presumed to be Access Persons of the Fund.'' The definition of Access Person also includes ''Any director, officer or general partner of a principal underwriter who, in the ordinary course of business, makes, participates in or obtains information regarding, the purchase or sale of Covered Securities by the Fund for which the principal underwriter acts, or whose functions or duties in the ordinary course of business relate to the making of any recommendation to the Fund regarding the purchase or sale of Covered Securities.'' Rule 17j–1(a)(1).

[5] A ''Covered Security'' is any security that falls within the definition in section 2(a)(36) of the Act, except for direct obligations of the U.S. Government, bankers' acceptances, bank certificates of deposit, commercial paper and high quality short-term debt instruments, including repurchase agreements, and shares issued by open-end funds. Rule 17j–1(a)(4).

[6] Rule 17j–1(d)(2) contains the following exceptions: (i) An Access Person need not file a report for transactions effected for, and securities held in, any account over which the Access Person does not have control; (ii) an independent director of the fund, who would otherwise be required to report solely by reason of being a fund director and who does not have information with respect to the fund's transactions in a particular security, does not have to file an initial holdings report or a quarterly transaction report; (iii) an Access Person of a principal underwriter of the fund does not have to file reports if the principal underwriter is not affiliated with the fund (unless the fund is a unit investment trust) or any investment adviser of the fund and the principal underwriter of the fund does not have any officer, director, or general partner who serves in one of those capacities for the fund or any investment adviser of the fund; (iv) an Access Person to an investment adviser need not make quarterly reports if the report would duplicate information provided under the reporting provisions of the Investment Adviser's Act of 1940; (v) an Access Person need not make quarterly transaction reports if the information provided in the report would duplicate information received by the 17j–1 organization in the form of broker trade confirmations or account statements or information otherwise in the records of the 17j–1 organization; and (vi) an Access Person need not make quarterly

Continued

Within 10 days of becoming an Access Person, a dated initial holdings report that sets forth certain information with respect to the Access Person's securities and accounts; (ii) dated quarterly transaction reports within 30 days of the end of each calendar quarter providing certain information with respect to any securities transactions during the quarter and any account established by the Access Person in which any securities were held during the quarter; and (iii) dated annual holding reports providing information with respect to each Covered Security the Access Person beneficially owns and accounts in which securities are held for his or her benefit. In addition, rule 17j–1 requires investment personnel of a fund or its investment adviser, before acquiring beneficial ownership in securities through an initial public offering (IPO) or in a private placement, to obtain approval from the fund or the fund's investment adviser.

The requirements that the management of a rule 17j–1 organization provide the fund's board with new and amended codes of ethics and an annual issues and certification report are intended to enhance board oversight of personal investment policies applicable to the fund and the personal investment activities of Access Persons. The requirements that Access Persons provide initial holdings reports, quarterly transaction reports, and annual holdings reports and request approval for purchases of securities through IPOs and private placements are intended to help fund compliance personnel and the Commission's examinations staff monitor potential conflicts of interest and detect potentially abusive activities. The requirement that each rule 17j–1 organization maintain certain records is intended to assist the organization and the Commission's examinations staff in determining if there have been violations of rule 17j–1.

We estimate that annually there are approximately 75,316 respondents under rule 17j–1, of which 5,316 are rule 17j–1 organizations and 70,000 are Access Persons. In the aggregate, these respondents make approximately 107,038 responses annually. We estimate that the total annual burden of complying with the information collection requirements in rule 17j–1 is approximately 368,094 hours. This hour burden represents time spent by Access Persons that must file initial and annual holdings reports and quarterly transaction reports, investment personnel that must obtain approval before acquiring beneficial ownership in any securities through an IPO or private placement, and the responsibilities of Rule 17j–1 organizations arising from information collection requirements under rule 17j–1. These include notifying Access Persons of their reporting obligations, preparing an annual rule 17j–1 report and certification for the board, documenting their approval or rejection of IPO and private placement requests, maintaining annual rule 17j–1 records, maintaining electronic reporting and recordkeeping systems, amending their codes of ethics as necessary, and, for new fund complexes, adopting a code of ethics.

We estimate that there is an annual cost burden of approximately $5,000 per fund complex, for a total of $3,915,000, associated with complying with the information collection requirements in rule 17j–1. This represents the costs of purchasing and maintaining computers and software to assist funds in carrying out rule 17j–1 recordkeeping.

These burden hour and cost estimates are based upon the Commission staff's experience and discussions with the fund industry. The estimates of average burden hours and costs are made solely for the purposes of the Paperwork Reduction Act. These estimates are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

Compliance with the collection of information requirements of the rule is mandatory and is necessary to comply with the requirements of the rule in general. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid control number. Rule 17j–1 requires that records be maintained for at least five years in an easily accessible place.[7]

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (b) the accuracy of the Commission's estimate of the burden of the collections of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burdens 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 in writing within 60 days of this publication.

Please direct your written comments to Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, C/O Candace Kenner, 100 F Street NE, Washington, DC 20549; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: February 11, 2019.

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–02308 Filed 2–13–19; 8:45 am]

BILLING CODE 8011–01–P

transaction reports with respect to transactions effected pursuant to an Automatic Investment Plan.

[7] If information collected pursuant to the rule is reviewed by the Commission's examination staff, it will be accorded the same level of confidentiality accorded to other responses provided to the Commission in the context of its examination and oversight program. See section 31(c) of the Investment Company Act (15 U.S.C. 80a–30(c)).

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:

Rule 206(4)–7, SEC File No. 270–523, OMB Control No. 3235–0585

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

The title for the collection of information is ''Investment Advisers Act rule 206(4)–7 (17 CFR 275.206(4)–7), Compliance procedures and practices.'' Rule 206(4)–7 requires each investment adviser registered with the Commission to (i) adopt and implement internal compliance policies and procedures, (ii) review those policies and procedures annually, (iii) designate a chief compliance officer, and (iv) maintain certain compliance records. The rule is designed to protect investors by fostering better compliance with the securities laws. The collection of information under rule 206(4)–7 is necessary to assure that investment advisers maintain comprehensive internal programs that promote the advisers' compliance with the Investment Advisers Act of 1940. The information collected under this rule may also assist Commission staff in

assessing investment advisers' compliance programs.

This collection of information is mandatory. The Commission's examination staff review the information collected pursuant to the rule 206(4)–7; it will be accorded the same level of confidentiality accorded to other responses provided to the Commission in the context of its examination and oversight program.

The respondents to this information collection are investment advisers registered with the Commission. Our latest data indicate that there were 13,249 advisers registered with the Commission as of October 31, 2018. The Commission has estimated that compliance with rule 206(4)–7 imposes an annual burden of approximately 87 hours per respondent. Based on this figure, the Commission estimates a total annual burden of 1,152,663 hours for this collection of information.

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information 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 in writing within 60 days of this publication. An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

Please direct your written comments to Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, C/O Candace Kenner, 100 F Street NE, Washington, DC 20549; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: February 11, 2019.

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–02310 Filed 2–13–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85083; File No. SR–FINRA–2019–005]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Implementation Date of Certain Amendments to FINRA Rule 4210 Approved Pursuant to SR–FINRA–2015–036

February 8, 2019.

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 January 29, 2019, 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. FINRA has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to extend, to March 25, 2020, the implementation date of the amendments to FINRA Rule 4210 (Margin Requirements) pursuant to SR–FINRA–2015–036, other than the amendments pursuant to SR–FINRA–2015–036 that were implemented on December 15, 2016. The proposed rule change would not make any changes to the text of FINRA rules.

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

On October 6, 2015, FINRA filed with the Commission proposed rule change SR–FINRA–2015–036, which proposed to amend FINRA Rule 4210 to establish margin requirements for (1) To Be Announced (''TBA'') transactions, inclusive of adjustable rate mortgage (''ARM'') transactions; (2) Specified Pool Transactions; and (3) transactions in Collateralized Mortgage Obligations (''CMOs''), issued in conformity with a program of an agency or Government-Sponsored Enterprise (''GSE''), with forward settlement dates, as defined more fully in the filing (collectively, ''Covered Agency Transactions''). The Commission approved SR–FINRA–2015–036 on June 15, 2016 (the ''Approval Date'').[4]

Pursuant to Partial Amendment No. 3 to SR–FINRA–2015–036, FINRA announced in *Regulatory Notice* 16–31 that the rule change would become effective on December 15, 2017, 18 months from the Approval Date, except that the risk limit determination requirements as set forth in paragraphs (e)(2)(F), (e)(2)(G) and (e)(2)(H) of Rule 4210 and in new Supplementary Material .05, each as respectively amended or established by SR–FINRA–2015–036 (collectively, the ''risk limit determination requirements''), would become effective on December 15, 2016, six months from the Approval Date.[5]

Industry participants sought clarification regarding the implementation of the requirements pursuant to SR–FINRA–2015–036. Industry participants also requested additional time to make system changes necessary to comply with the requirements, including time to test the system changes, and requested additional time to update or amend margining agreements and related

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] *See* Securities Exchange Act Release No. 78081 (June 15, 2016), 81 FR 40364 (June 21, 2016) (Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval to a Proposed Rule Change to Amend FINRA Rule 4210 (Margin Requirements) to Establish Margin Requirements for the TBA Market, as Modified by Amendment Nos. 1, 2, and 3; File No. SR–FINRA–2015–036).

[5] *See* Partial Amendment No. 3 to SR–FINRA–2015–036 and *Regulatory Notice* 16–31 (August 2016), both available at: *www.finra.org.*

documentation. In response, FINRA made available a set of Frequently Asked Questions & Guidance [6] and, pursuant to SR–FINRA–2017–029,[7] extended the implementation date of the requirements of SR–FINRA–2015–036 to June 25, 2018 (the ''June 25, 2018 implementation date''), except for the risk limit determination requirements, which, as announced in *Regulatory Notice* 16–31, became effective on December 15, 2016.

Industry participants requested that FINRA reconsider the potential impact of certain requirements pursuant to SR–FINRA–2015–036 on smaller and medium-sized firms. Industry participants also requested that FINRA extend the implementation date pending such reconsideration to reduce potential uncertainty in the Covered Agency Transaction market. In response, pursuant to SR–FINRA–2018–017,[8] FINRA extended the June 25, 2018 implementation date to March 25, 2019 (the ''March 25, 2019 implementation date''). FINRA noted that, as FINRA stated in Partial Amendment No. 3 to SR–FINRA–2015–036, FINRA would monitor the impact of the requirements pursuant to that rulemaking and, if the requirements prove overly onerous or otherwise are shown to negatively impact the market, FINRA would consider revisiting such requirements as may be necessary to mitigate the rule's impact.[9]

FINRA is considering, in consultation with industry participants and other regulators, potential amendments to the requirements of SR–FINRA–2015–036. FINRA believes that this is appropriate in the interest of avoiding unnecessary disruption to the Covered Agency Transaction market. As such, FINRA is proposing to extend the March 25, 2019 implementation date to March 25, 2020 while FINRA considers potential amendments. FINRA notes that the risk limit determination requirements pursuant to SR–FINRA–2015–036 became effective on December 15, 2016 and, as such, the implementation of such requirements is not affected by the proposed rule change.

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the Commission waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing. The operative date will be the date of filing of the proposed rule change.

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. FINRA believes that the proposed rule change provides FINRA additional time to consider potential amendments to the requirements pursuant to SR–FINRA–2015–036 and helps to reduce potential uncertainty in the Covered Agency Transaction market while FINRA considers such amendments. FINRA believes that providing additional time is consistent with the Act because this provides FINRA, in consultation with industry participants and other regulators, additional opportunity to consider whether amendments to the requirements would improve their effectiveness and thereby protect investors and the public interest by helping to promote stability in the Covered Agency Transaction market.

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. FINRA believes that extending the March 25, 2019 implementation date to March 25, 2020, so as to provide additional time for FINRA to consider, in consultation with industry participants and other regulators, whether any amendments to the requirements pursuant to SR–FINRA–2015–036 are appropriate will benefit all parties.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the 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 [11] and Rule 19b–4(f)(6) thereunder.[12]

A proposed rule change filed under Rule 19b–4(f)(6) [13] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii),[14] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. FINRA has asked the Commission to waive the 30-day operative delay so that the proposal may become operative upon filing. FINRA has stated that the purpose of the proposed rule change is to allow FINRA additional time to consider potential revisions to the requirements pursuant to SR–FINRA–2015–036 and to consult with industry participants and other regulators whether any revisions are appropriate, in the interest of avoiding unnecessary disruption to the Covered Agency Transaction market. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposal to extend the implementation date of certain amendments to FINRA Rule 4210 does not raise any new or novel issues and will help to facilitate the implementation of the margin requirements for Covered Agency Transactions. Therefore, the Commission hereby waives the 30-day operative delay requirement and

[6] Available at: *www.finra.org/industry/guidance.* Further, staff of the SEC's Division of Trading and Markets made available a set of Frequently Asked Questions regarding Exchange Act Rule 15c3–1 and Rule 15c3–3 in connection with Covered Agency Transactions under FINRA Rule 4210, also available at: *www.finra.org/industry/guidance.*

[7] *See* Securities Exchange Act Release No. 81722 (September 26, 2017), 82 FR 45915 (October 2, 2017) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Delay the Implementation Date of Certain Amendments to FINRA Rule 4210 Approved Pursuant to SR–FINRA–2015–036; File No. SR–FINRA–2017–029); *see also Regulatory Notice* 17–28 (September 29, 2017).

[8] *See* Securities Exchange Act Release No. 83155 (May 2, 2018), 83 FR 20889 (May 8, 2018) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Implementation Date of Certain Amendments to FINRA Rule 4210 Approved Pursuant to SR–FINRA–2015–036; File No. SR–FINRA–2018–017).

[9] *See* Partial Amendment No. 3 to SR–FINRA–2015–036, available at: *www.finra.org.*

[10] 15 U.S.C. 78*o*–3(b)(6).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires FINRA to give the Commission written notice of FINRA's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the filing of the proposed rule change, or such shorter time as designated by the Commission. FINRA has satisfied this requirement.

[13] 17 CFR 240.19b–4(b)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

designates the proposed rule change as operative upon filing.[15]

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–FINRA–2019–005 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–2019–005. 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 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–2019–005 and should be submitted on or before March 7, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–02289 Filed 2–13–19; 8:45 am]

BILLING CODE 8011–01–P

[15] 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).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85078; File No. SR–CboeEDGX–2019–002]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Exchange's Fee Schedule Applicable to Its Equities Trading Platform (''EDGX Equities'') To Introduce a ''Cross-Asset Volume Tier''

February 8, 2019.

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 January 29, 2019, Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (''EDGX'' or the ''Exchange'') is filing with the Securities and Exchange Commission (the ''Commission'') a proposed rule change to amend the Exchange's fee schedule applicable to its equities trading platform (''EDGX Equities'') to introduce a ''Cross-Asset Volume Tier.'' The text of the proposed rule change is attached as Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/options/regulation/rule_filings/edgx/*), 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 purpose of the proposed rule change is to amend the EDGX Equities fee schedule to introduce a ''Cross-Asset Volume Tier'' under Footnote 1, effective February 1, 2019.

Currently, with respect to the Exchange's equities trading platform, the Exchange determines the liquidity adding rebate that it will provide to Members using the Exchange's tiered pricing structure. The EDGX Equities fee schedule currently contains seven Add Volume Tiers that provide enhanced rebates, ranging from of $0.0025 to $0.0033 per share, for orders yielding fee codes B,[3] V,[4] Y,[5] 3[6] and 4.[7] The Exchange proposes to adopt an eighth tier under Footnote 1 called the Cross-Asset Volume Tier. Particularly, the Exchange proposes to create a cross-asset tier which is designed to incentivize members to achieve certain levels of participation on both the Exchange's equities and options platform (''EDGX Options''). As

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] ''B'' is associated with displayed orders that add liquidity on EDGX for Tape B.

[4] ''V'' is associated with displayed orders that add liquidity on EDGX for Tape A.

[5] ''Y'' is associated with displayed orders that add liquidity on EDGX for Tape C.

[6] ''3'' is associated with displayed orders that add liquidity on EDGX for Tape A or C during the post-market or pre-market trading sessions.

[7] ''4'' is associated with displayed orders that add liquidity on EDGX for Tape B during the post-market or pre-market trading sessions.

proposed, under the Cross-Asset Volume Tier, a Member would receive a rebate of $0.0030 per share if that Member (i) adds an ADV [8] greater or equal to 0.20% of the TCV [9] and (ii) has an ADV in Customer orders on EDGX Options greater or equal to 0.10% of average OCV.[10] The Exchange notes that another Exchange has similar cross-asset add volume tiers.[11]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,[12] in general, and furthers the requirements of Section 6(b)(4),[13] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its [sic]

In particular, the Exchange notes that volume-based discounts such as those currently maintained on the Exchange have been widely adopted by options exchanges and are equitable because they are open to all Members on an equal basis and provide additional benefits or discounts that are reasonably related to (i) the value of an exchange's market quality; (ii) associated with higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns; and (iii) introduction of higher volumes of orders into the price and volume discovery processes. The Exchange believes the proposal to add a new Cross-Asset Volume Tier under footnote 1 is reasonable because it provides Members an additional opportunity to receive an enhanced rate for orders that add liquidity and is a reasonable means to encourage Members to increase their liquidity on the Exchange in both equities and options. Deepening the Exchange's liquidity pool benefits investors by encouraging more price competition and providing additional opportunities to trade. The Exchange further believes the proposed threshold is commensurate with the proposed enhanced rebate and that it will encourage members to add increased liquidity to EDGX each month in both equities and options. Furthermore, the Exchange believes that the proposed Cross-Asset Volume Tier is not unfairly discriminatory as it applies uniformly to all Members.

To the extent a Member participates on the Exchange but not on EDGX Options, the Exchange does believe that the proposal is still reasonable, equitably allocated and non-discriminatory with respect to such Member based on the overall benefit to the Exchange resulting from the success of EDGX Options. Particularly, the Exchange believes such success allows the Exchange to continue to provide and potentially expand its existing incentive programs to the benefit of all participants on the Exchange, whether they participate on EDGX Options or not. The proposed pricing program is also fair and equitable in that membership in EDGX Options is available to all market participants which would provide them with access to the benefits on EDGX Options provided by the proposed change, even where a member of EDGX Options is not necessarily eligible for the proposed increased rebate on the Exchange. Further, the proposed change will result in Members receiving either the same or an increased rebate than they would currently receive. The Exchange also notes that another Exchange has similar cross-asset volume tiers.[14]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the proposed change is designed to enhance competition by attracting additional liquidity and increasing the competitiveness of the Exchange. The proposed rebate tier would apply to all members uniformly based. The Exchange operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule change reflects a competitive pricing structure designed to encourage market participants to direct their order flow to the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [15] and paragraph (f) of Rule 19b–4 [16] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeEDGX–2019–002 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–CboeEDGX–2019–002. 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

[8] "ADV" means average daily volume calculated as the number of shares added to, removed from, or routed by, the Exchange, or any combination or subset thereof, per day. ADV is calculated on a monthly basis.

[9] "TCV" means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.

[10] "OCV" means, for purposes of equities pricing, the total equity and ETF options volume that clears in the Customer range at the Options Clearing Corporation ("OCC") for the month for which the fees apply, excluding volume on any day that the Exchange experiences an Exchange System Disruption and on any day with a scheduled early market close, using the definition of Customer as provided under the Exchange's fee schedule for EDGX Options.

[11] *See* Cboe BZX U.S. Equities Exchange Fee Schedule, Footnote 1.

[12] 15 U.S.C. 78f.

[13] 15 U.S.C. 78f(b)(4).

[14] *See* Cboe BZX U.S. Equities Exchange Fee Schedule, Footnote 1.

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f).

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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Cboe–EDGX–2019–002 and should be submitted on or before March 7, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–02286 Filed 2–13–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85080; File No. SR–CBOE–2019–004]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Options Regulatory Fee

February 8, 2019.

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 January 29, 2019, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to amend its Fees Schedule relating to the Options Regulatory Fee. 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to increase the Options Regulatory Fee (''ORF'') from $0.0028 per contract to $0.0045 per contract in order to help ensure that revenue collected from the ORF, in combination with other regulatory fees and fines, meets the Exchange's total regulatory costs.

The ORF is assessed by Cboe Options to each Trading Permit Holder (''TPH'') for options transactions cleared by the TPH that are cleared by the Options Clearing Corporation (''OCC'') in the customer range, regardless of the exchange on which the transaction occurs.[3] In other words, the Exchange imposes the ORF on all customer-range transactions cleared by a TPH, even if the transactions do not take place on the Exchange. The ORF is collected by OCC on behalf of the Exchange from the Clearing Trading Permit Holder (''CTPH'') or non-CTPH that ultimately clears the transaction. With respect to linkage transactions, Cboe Options reimburses its routing broker providing Routing Services pursuant to Cboe Options Rule 6.14B for options regulatory fees it incurs in connection with the Routing Services it provides.

Revenue generated from ORF, when combined with all of the Exchange's other regulatory fees and fines, is designed to recover a material portion of the regulatory costs to the Exchange of the supervision and regulation of TPH customer options business. Regulatory costs include direct regulatory expenses and certain indirect expenses for work allocated in support of the regulatory function. The direct expenses include in-house and third party service provider costs to support the day to day regulatory work such as surveillances, investigations and examinations. The indirect expenses include support from such areas as human resources, legal, information technology and accounting. These indirect expenses are estimated to be approximately 8% of Cboe Options' total regulatory costs for 2019. Thus, direct expenses are estimated to be approximately 92% of total regulatory costs for 2019. In addition, it is Cboe Options' practice that revenue generated from ORF not exceed more than 75% of total annual regulatory costs. These expectations are estimated, preliminary and may change. There can be no assurance that our final costs for 2019 will not differ materially from these expectations and prior practice; however, the Exchange believes that revenue generated from the ORF, when combined with all of the Exchange's other regulatory fees and fines, will cover a material portion, but not all, of the Exchange's regulatory costs.

The Exchange also notes that its regulatory responsibilities with respect to TPH compliance with options sales practice rules have largely been allocated to FINRA under a 17d–2 agreement.[4] The ORF is not designed to cover the cost of that options sales practice regulation.

The Exchange will continue to monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed the Exchange's total regulatory costs. The Exchange monitors its regulatory costs and revenues at a minimum on a semi-annual basis. If the Exchange determines regulatory revenues exceed or are insufficient to cover a material portion of its regulatory costs, the Exchange will adjust the ORF by submitting a fee change filing to the

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The ORF also applies to customer-range transactions executed during Extended Trading Hours.

[4] *See* Securities Exchange Act Release No. 76309 (October 29, 2015), 80 FR 68361 (November 4, 2015).

Commission. The Exchange notifies TPHs of adjustments to the ORF via regulatory circular. The Exchange endeavors to provide TPHs with such notice at least 30 calendar days prior to the effective date of the change.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[5] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[6] which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its TPHs and other persons using its facilities. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[7] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes the proposed fee change is reasonable because it would help ensure that revenue collected from the ORF, in combination with other regulatory fees and fines, does not exceed the Exchange's total regulatory costs. Moreover, the Exchange believes the ORF ensures fairness by assessing higher fees to those TPHs that require more Exchange regulatory services based on the amount of customer options business they conduct. Regulating customer trading activity is much more labor intensive and requires greater expenditure of human and technical resources than regulating non-customer trading activity, which tends to be more automated and less labor-intensive. As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-customer component (*e.g.,* TPH proprietary transactions) of its regulatory program.[8] The Exchange believes the proposed fee change is equitable and not unfairly discriminatory in that it is charged to all TPHs on all their transactions that clear in the customer range at the OCC.

The Exchange believes the proposal to eliminate obsolete language with respect to past ORF rates maintains clarity in the rules and alleviates potential confusion, thereby protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. This proposal does not create an unnecessary or inappropriate intra-market burden on competition because the ORF applies to all customer activity, thereby raising regulatory revenue to offset regulatory expenses. It also supplements the regulatory revenue derived from non-customer activity. This proposal does not create an unnecessary or inappropriate inter-market burden on competition because it is a regulatory fee that supports regulation in furtherance of the purposes of the Act. The Exchange is obligated to ensure that the amount of regulatory revenue collected from the ORF, in combination with its other regulatory fees and fines, does not exceed regulatory costs.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and paragraph (f) of Rule 19b–4[10] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–CBOE–2019–004 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File No. SR–CBOE–2019–004. 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 No. SR–CBOE–2019–004, and should be submitted on or before March 7, 2019.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78f(b)(5).

[8] If the Exchange changes its method of funding regulation or if circumstances otherwise change in the future, the Exchange may decide to modify the ORF or assess a separate regulatory fee on TPH proprietary transactions if the Exchange deems it advisable.

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–02287 Filed 2–13–19; 8:45 am]

BILLING CODE 8011–01–P

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:

Rule 15a–6, SEC File No. 270–0329, OMB Control No. 3235–0371

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 15a–6, (17 CFR 240.15a–6), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 15a–6 provides conditional exemptions from the requirement to register as a broker-dealer pursuant to Section 15 of the Exchange Act (15 U.S.C. 78o) for foreign broker-dealers that engage in certain specified activities involving U.S. persons. In particular, Rule 15a–6(a)(3) provides an exemption from broker-dealer registration for foreign broker-dealers that solicit and effect transactions with or for U.S. institutional investors or major U.S. institutional investors through a registered broker-dealer, provided that the U.S. broker-dealer, among other things, obtains certain information about, and consents to service of process from, the personnel of the foreign broker-dealer involved in such transactions, and maintains certain records in connection therewith.

These requirements are intended to ensure (a) that the registered broker-dealer will receive notice of the identity of, and has reviewed the background of, foreign personnel who will contact U.S. investors, (b) that the foreign broker-dealer and its personnel effectively may be served with process in the event enforcement action is necessary, and (c) that the Commission has ready access to information concerning these persons and their U.S. securities activities. Commission staff estimates that approximately 2,000 U.S. registered broker-dealers will spend an average of two hours of clerical staff time and one hour of managerial staff time per year obtaining the information required by the rule, resulting in a total aggregate burden of 6,000 hours per year for complying with the rule. Assuming an hourly cost of $63 [1] for a compliance clerk and $283 [2] for a compliance manager, the resultant total internal labor cost of compliance for the respondents is $818,000 per year (2,000 entities × ((2 hours/entity × $63/hour) + (1 hour per entity × $283/hour)) = $818,000).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information 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 in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Candace Kenner, 100 F Street NE, Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov.*

Dated: February 11, 2019.

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–02309 Filed 2–13–19; 8:45 am]

BILLING CODE 8011–01–P

[1] The hourly rate used for a compliance clerk was from SIFMA's *Office Salaries in the Securities Industry 2013,* modified by Commission staff to account for an 1,800 hour work-year and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead.

[2] The hourly rate used for a compliance manager was from SIFMA's *Management & Professional Earnings in the Securities Industry 2013,* modified by Commission staff to account for an 1,800 hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:

Form N–14, SEC File No. 270–297, OMB Control No. 3235–0336

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''Paperwork Reduction Act''), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Form N–14 (17 CFR 239.23) is the form for registration under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) (''Securities Act'') of securities issued by management investment companies registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (''Investment Company Act'') and business development companies as defined by Section 2(a)(48) of the Investment Company Act in: (1) A transaction of the type specified in rule 145(a) under the Securities Act (17 CFR 230.145(a)); (2) a merger in which a vote or consent of the security holders of the company being acquired is not required pursuant to applicable state law; (3) an exchange offer for securities of the issuer or another person; (4) a public reoffering or resale of any securities acquired in an offering registered on Form N–14; or (5) two or more of the transactions listed in (1) through (4) registered on one registration statement. The principal purpose of Form N–14 is to make material information regarding securities to be issued in connection with business combination transactions available to investors. The information required to be filed with the Commission permits verification of compliance with securities law requirements and assures the public availability and dissemination of such information. Without the registration statement requirement, material information may not necessarily be available to investors.

We estimate that approximately 156 funds each file one new registration statement on Form N–14 annually, and that 97 funds each file one amendment

to a registration statement on Form N–14 annually. Based on conversations with fund representatives, we estimate that the reporting burden is approximately 620 hours per respondent for a new Form N–14 registration statement and 300 hours per respondent for amending the Form N–14 registration statement. This time is spent, for example, preparing and reviewing the registration statements. Accordingly, we calculate the total estimated annual internal burden of responding to Form N–14 to be approximately 125,820 hours. In addition to the burden hours, based on conversations with fund representatives, we estimate that the total cost burden of compliance with the information collection requirements of Form N–14 is approximately $27,500 for preparing and filing an initial registration statement on Form N–14 and approximately $16,000 for preparing and filing an amendment to a registration statement on Form N–14. This includes, for example, the cost of goods and services purchased to prepare and update registration statements on Form N–14, such as for the services of outside counsel. Accordingly, we calculate the total estimated annual cost burden of responding to Form N–14 to be approximately $5,842,000.

Estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even representative survey or study of the costs of Commission rules and forms. The collection of information under Form N–14 is mandatory. The information provided under Form N–14 will not be kept confidential. 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.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information 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 in writing within 60 days of this publication.

Please direct your written comments to Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, C/O Candace Kenner, 100 F Street NE, Washington, DC 20549; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: February 11, 2019.

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–02311 Filed 2–13–19; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33372; File No. 812–14891]

Pharos Capital BDC, Inc., et al.

February 8, 2019.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of application for an order under sections 17(d) and 57(i) of the Investment Company Act of 1940 (the ''Act'') and rule 17d–1 under the Act to permit certain joint transactions otherwise prohibited by sections 17(d) and 57(a)(4) of the Act and rule 17d–1 under the Act. Applicants request an order to permit a business development company to co-invest in portfolio companies with affiliated investment funds.

APPLICANTS: Pharos Capital BDC, Inc. (''Pharos''; Pharos Capital RBIC, L.P. (''Pharos RBIC''); Pharos Capital Partners III, L.P. (''Pharos III''); Pharos Capital Partners III–A, L.P. (''Pharos III–A''); and Pharos Capital Group, LLC (''PCG'').

FILING DATES: The application was filed on March 23, 2018, and amended on October 10, 2018.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 8, 2019, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F St. NE, Washington, DC 20549–1090. Applicants: 3889 Maple Avenue, Suite 400, Dallas, TX 75219.

FOR FURTHER INFORMATION: Stephan N. Packs, Senior Counsel, at (202) 551–6853, or David J. Marcinkus, Branch Chief, at (202) 551–6825 (Chief Counsel's Office, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Introduction

1. The Applicants request an order of the Commission under Sections 17(d) and 57(i) and Rule 17d–1 thereunder (the ''Order'') to permit, subject to the terms and conditions set forth in the application (the ''Conditions''), a Regulated Fund [1] and one or more other Regulated Funds and/or one or more Affiliated Funds [2] to enter into Co-Investment Transactions with each other. ''Co-Investment Transaction'' means any transaction in which one or more Regulated Funds (or its Wholly-Owned Investment Sub) participated together with one or more Affiliated Funds and/or one or more other Regulated Funds in reliance on the Order. ''Potential Co-Investment Transaction'' means any investment opportunity in which a Regulated Fund (or its Wholly-Owned Investment Sub) could not participate together with one or more Affiliated Funds and/or one or more other Regulated Funds without obtaining and relying on the Order.[3]

[1] ''Regulated Funds'' means Pharos and any other Future Regulated Funds. ''Future Regulated Fund'' means a closed-end management investment company (a) that is registered under the Act or has elected to be regulated as a BDC and (b) whose investment adviser is an Adviser. ''Adviser'' means PCG together with any future investment adviser that (i) controls, is controlled by or is under common control with PCG, (ii) is registered as an investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act''), and (iii) is not a Regulated Fund or a subsidiary of a Regulated Fund.

[2] ''Affiliated Fund'' means any Existing Affiliated Fund (identified in Sections I.B. and II.B. of the application) or any Future Affiliated Fund.

[3] All existing entities that currently intend to rely on the Order have been named as Applicants and any existing or future entities that may rely on the Order in the future will comply with its terms and Conditions set forth in the application.

Applicants

2. Pharos is a Maryland corporation and a closed-end management investment company that on March 26, 2018 elected to be regulated as a business development company (''BDC'') under the Act.[4] The Pharos Board[5] is comprised of a majority of members who are Independent Directors.[6]

3. PCG, a Delaware limited partnership that is registered under the Advisers Act, serves as the investment adviser to Pharos.

4. The Existing Affiliated Funds are Pharos RBIC, Pharos III, and Pharos III–A. Applicants represent that each Existing Affiliated Fund is a separate and distinct legal entity and each would be an investment company but for Section 3(c)(1) or 3(c)(7) of the Act. PCG is the Adviser to each Existing Affiliated Fund.

5. Applicants state that a Regulated Fund may, from time to time, form one or more Wholly-Owned Investment Subs.[7] Such a subsidiary may be prohibited from investing in a Co-Investment Transaction with a Regulated Fund (other than its parent) or any Affiliated Fund because it would be a company controlled by its parent Regulated Entity for purposes of Section 57(a)(4) and Rule 17d–1. Applicants request that each Wholly-Owned Investment Sub be permitted to participate in Co-Investment Transactions in lieu of the Regulated Entity that owns it and that the Wholly-Owned Investment Sub's participation in any such transaction be treated, for purposes of the Order, as though the parent Regulated Fund were participating directly.

Applicants' Representations

A. Allocation Process

6. Applicants state that the Adviser is presented with thousands of investment opportunities each year on behalf of its clients, and that the Adviser will determine how to allocate those opportunities in a manner that, over time, is fair and equitable to all of its clients. Such investment opportunities may be Potential Co-Investment Transactions.

7. Applicants represent that the Adviser has established processes for allocating initial investment opportunities, opportunities for subsequent investments in an issuer and dispositions of securities holdings reasonably designed to treat all clients fairly and equitably. Further, Applicants represent that these processes will be extended and modified in a manner reasonably designed to ensure that the additional transactions permitted under the Order will both (i) be fair and equitable to the Regulated Funds and the Affiliated Funds and (ii) comply with the Conditions. In particular, consistent with Condition 1, if a Potential Co-Investment Transaction falls within the then-current Objectives and Strategies[8] and any Board-Established Criteria[9] of a Regulated Fund, the policies and procedures will require that the relevant investment advisory personnel responsible for that Regulated Fund receive sufficient information to allow the Regulated Fund's Adviser to make its independent determination and recommendations under the Conditions.

8. The Adviser to each applicable Regulated Fund will then make an independent determination of the appropriateness of the investment for the Regulated Fund in light of the Regulated Fund's then-current circumstances. If the Adviser to a Regulated Fund deems the Regulated Fund's participation in such Potential Co-Investment Transaction to be appropriate, then it will formulate a recommendation regarding the proposed order amount for the Regulated Fund.

9. Applicants state that, for each Regulated Fund and Affiliated Fund whose Adviser recommends participating in a Potential Co-Investment Transaction, the Adviser will submit a proposed order amount to an internal investment committee which the Adviser will establish to handle the allocation of investment opportunities in Potential Co-Investment Transactions. Applicants state further that, at this stage, each proposed order amount may be reviewed and adjusted, in accordance with the Advisers' written allocation policies and procedures, by the Adviser's investment committee.[10] The order of a Regulated Fund or Affiliated Fund resulting from this process is referred to as its ''Internal Order.'' The Internal Order will be submitted for approval by the Required Majority of any participating Regulated Funds in accordance with the Conditions.[11]

10. If the aggregate Internal Orders for a Potential Co-Investment Transaction do not exceed the size of the investment opportunity immediately prior to the submission of the orders to the underwriter, broker, dealer or issuer, as applicable (the ''External Submission''), then each Internal Order will be fulfilled as placed. If, on the other hand,

[4] Section 2(a)(48) defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in Section 55(a)(1) through 55(a)(3) and makes available significant managerial assistance with respect to the issuers of such securities.

[5] ''Board'' means the board of directors (or the equivalent) of a Regulated Fund.

[6] ''Independent Director'' means a member of the Board of any relevant entity who is not an ''interested person'' as defined in Section 2(a)(19) of the Act. No Independent Director of a Regulated Fund will have a financial interest in any Co-Investment Transaction, other than indirectly through share ownership in one of the Regulated Funds.

[7] ''Wholly-Owned Investment Sub'' means an entity (i) that is wholly-owned by a Regulated Fund (with such Regulated Fund at all times holding, beneficially and of record, 100% of the voting and economic interests); (ii) whose sole business purpose is to hold one or more investments on behalf of such Regulated Fund (and, in the case of a SBIC Subsidiary (defined below), maintain a license under the SBA Act (defined below) and issue debentures guaranteed by the SBA (defined below)); (iii) with respect to which such Regulated Fund's Board has the sole authority to make all determinations with respect to the entity's participation under the Conditions; and (iv) that would be an investment company but for Section 3(c)(1) or 3(c)(7) of the Act. ''SBIC Subsidiary'' means a Wholly-Owned Investment Sub that is licensed by the Small Business Administration (the ''SBA'') to operate under the Small Business Investment Act of 1958, as amended, (the ''SBA Act'') as a small business investment company.

[8] ''Objectives and Strategies'' means with respect to any Regulated Fund, its investment objectives and strategies, as described in its most current registration statement on Form N–2, other current filings with the Commission under the Securities Act of 1933 (the ''Securities Act'') or under the Securities Exchange Act of 1934, as amended, and its most current report to stockholders.

[9] ''Board-Established Criteria'' means criteria that the Board of a Regulated Fund may establish from time to time to describe the characteristics of Potential Co-Investment Transactions regarding which the Adviser to the Regulated Fund should be notified under Condition 1. The Board-Established Criteria will be consistent with the Regulated Fund's Objectives and Strategies. If no Board-Established Criteria are in effect, then the Regulated Fund's Adviser will be notified of all Potential Co-Investment Transactions that fall within the Regulated Fund's then-current Objectives and Strategies. Board-Established Criteria will be objective and testable, meaning that they will be based on observable information, such as industry/sector of the issuer, minimum EBITDA of the issuer, asset class of the investment opportunity or required commitment size, and not on characteristics that involve a discretionary assessment. The Adviser to the Regulated Fund may from time to time recommend criteria for the Board's consideration, but Board-Established Criteria will only become effective if approved by a majority of the Independent Directors. The Independent Directors of a Regulated Fund may at any time rescind, suspend or qualify its approval of any Board-Established Criteria, though Applicants anticipate that, under normal circumstances, the Board would not modify these criteria more often than quarterly.

[10] The reason for any such adjustment to a proposed order amount will be documented in writing and preserved in the records of the Advisers.

[11] ''Required Majority'' means a required majority, as defined in Section 57(o) of the Act. In the case of a Regulated Fund that is a registered closed-end fund, the Board members that make up the Required Majority will be determined as if the Regulated Fund were a BDC subject to Section 57(o).

the aggregate Internal Orders for a Potential Co-Investment Transaction exceed the size of the investment opportunity immediately prior to the External Submission, then the allocation of the opportunity will be made pro rata on the basis of the size of the Internal Orders.[12] If, subsequent to such External Submission, the size of the opportunity is increased or decreased, or if the terms of such opportunity, or the facts and circumstances applicable to the Regulated Funds' or the Affiliated Funds' consideration of the opportunity, change, the participants will be permitted to submit revised Internal Orders in accordance with written allocation policies and procedures that the Advisers will establish, implement and maintain.[13]

B. Follow-On Investments

11. Applicants state that from time to time the Regulated Funds and Affiliated Funds may have opportunities to make Follow-On Investments[14] in an issuer in which a Regulated Fund and one or more other Regulated Funds and/or Affiliated Funds previously have invested.

12. Applicants propose that Follow-On Investments would be divided into two categories depending on whether the prior investment was a Co-Investment Transaction or a Pre-Boarding Investment.[15] If the Regulated Funds and Affiliated Funds had previously participated in a Co-Investment Transaction with respect to the issuer, then the terms and approval of the Follow-On Investment would be subject to the Standard Review Follow-Ons described in Condition 8. If the Regulated Funds and Affiliated Funds have not previously participated in a Co-Investment Transaction with respect to the issuer but hold a Pre-Boarding Investment, then the terms and approval of the Follow-On Investment would be subject to the Enhanced-Review Follow-Ons described in Condition 9. All Enhanced Review Follow-Ons require the approval of the Required Majority. For a given issuer, the participating Regulated Funds and Affiliated Funds would need to comply with the requirements of Enhanced-Review Follow-Ons only for the first Co-Investment Transaction. Subsequent Co-Investment Transactions with respect to the issuer would be governed by the requirements of Standard Review Follow-Ons.

13. A Regulated Fund would be permitted to invest in Standard Review Follow-Ons either with the approval of the Required Majority under Condition 8(c) or without Board approval under Condition 8(b) if it is (i) a Pro Rata Follow-On Investment[16] or (ii) a Non-Negotiated Follow-On Investment.[17] Applicants believe that these Pro Rata and Non-Negotiated Follow-On Investments do not present a significant opportunity for overreaching on the part of any Adviser and thus do not warrant the time or the attention of the Board. Pro Rata Follow-On Investments and Non-Negotiated Follow-On Investments remain subject to the Board's periodic review in accordance with Condition 10.

C. Dispositions

14. Applicants propose that Dispositions[18] would be divided into two categories. If the Regulated Funds and Affiliated Funds holding investments in the issuer had previously participated in a Co-Investment Transaction with respect to the issuer, then the terms and approval of the Disposition would be subject to the Standard Review Dispositions described in Condition 6. If the Regulated Funds and Affiliated Funds have not previously participated in a Co-Investment Transaction with respect to the issuer but hold a Pre-Boarding Investment, then the terms and approval of the Disposition would be subject to the Enhanced Review Dispositions described in Condition 7. Subsequent Dispositions with respect to the same issuer would be governed by Condition 6 under the Standard Review Dispositions.[19]

15. A Regulated Fund may participate in a Standard Review Disposition either with the approval of the Required Majority under Condition 6(d) or without Board approval under Condition 6(c) if (i) the Disposition is a Pro Rata Disposition[20] or (ii) the

[12] The Advisers will maintain records of all proposed order amounts, Internal Orders and External Submissions in conjunction with Potential Co-Investment Transactions. Each applicable Adviser will provide the Eligible Directors with information concerning the Affiliated Funds' and Regulated Funds' order sizes to assist the Eligible Directors with their review of the applicable Regulated Fund's investments for compliance with the Conditions. ''Eligible Directors'' means, with respect to a Regulated Fund and a Potential Co-Investment Transaction, the members of the Regulated Fund's Board eligible to vote on that Potential Co-Investment Transaction under Section 57(o) of the Act.

[13] However, if the size of the opportunity is decreased such that the aggregate of the original Internal Orders would exceed the amount of the remaining investment opportunity, then upon submitting any revised order amount to the Board of a Regulated Fund for approval, the Adviser to the Regulated Fund will also notify the Board promptly of the amount that the Regulated Fund would receive if the remaining investment opportunity were allocated pro rata on the basis of the size of the original Internal Orders. The Board of the Regulated Fund will then either approve or disapprove of the investment opportunity in accordance with condition 2, 6, 7, 8 or 9, as applicable.

[14] ''Follow-On Investment'' means an additional investment in the same issuer, including, but not limited to, through the exercise of warrants, conversion privileges or other rights to purchase securities of the issuer.

[15] ''Pre-Boarding Investments'' are investments in an issuer held by a Regulated Fund as well as one or more Affiliated Funds and/or one or more other Regulated Funds that: (i) Were acquired prior to participating in any Co-Investment Transaction; (ii) were acquired in transactions in which the only term negotiated by or on behalf of such funds was price; and (iii) were acquired either: (A) in reliance on one of the JT No-Action Letters (defined below); or (B) in transactions occurring at least 90 days apart and without coordination between the Regulated Fund and any Affiliated Fund or other Regulated Fund.

[16] A ''Pro Rata Follow-On Investment'' is a Follow-On Investment (i) in which the participation of each Affiliated Fund and each Regulated Fund is proportionate to its outstanding investments in the issuer or security, as appropriate, immediately preceding the Follow-On Investment, and (ii) in the case of a Regulated Fund, a majority of the Board has approved the Regulated Fund's participation in the pro rata Follow-On Investments as being in the best interests of the Regulated Fund. The Regulated Fund's Board may refuse to approve, or at any time rescind, suspend or qualify, its approval of Pro Rata Follow-On Investments, in which case all subsequent Follow-On Investments will be submitted to the Regulated Fund's Eligible Directors in accordance with Condition 8(c).

[17] A ''Non-Negotiated Follow-On Investment'' is a Follow-On Investment in which a Regulated Fund participates together with one or more Affiliated Funds and/or one or more other Regulated Funds (i) in which the only term negotiated by or on behalf of the funds is price and (ii) with respect to which, if the transaction were considered on its own, the funds would be entitled to rely on one of the JT No-Action Letters. ''JT No-Action Letters'' means SMC Capital, Inc., SEC No-Action Letter (pub. avail. Sept. 5, 1995) and Massachusetts Mutual Life Insurance Company, SEC No-Action Letter (pub. avail. June 7, 2000).

[18] ''Disposition'' means the sale, exchange or other disposition of an interest in a security of an issuer.

[19] However, with respect to an issuer, if a Regulated Fund's first Co-Investment Transaction is an Enhanced Review Disposition, and the Regulated Fund does not dispose of its entire position in the Enhanced Review Disposition, then before such Regulated Fund may complete its first Standard Review Follow-On in such issuer, the Eligible Directors must review the proposed Follow-On Investment not only on a stand-alone basis but also in relation to the total economic exposure in such issuer (*i.e.,* in combination with the portion of the Pre-Boarding Investment not disposed of in the Enhanced Review Disposition), and the other terms of the investments. This additional review would be required because such findings would not have been required in connection with the prior Enhanced Review Disposition, but they would have been required had the first Co-Investment Transaction been an Enhanced Review Follow-On.

[20] A ''Pro Rata Disposition'' is a Disposition (i) in which the participation of each Affiliated Fund and each Regulated Fund is proportionate to its outstanding investment in the security subject to Disposition immediately preceding the Disposition; and (ii) in the case of a Regulated Fund, a majority of the Board has approved the Regulated Fund's participation in pro rata Dispositions as being in the best interests of the Regulated Fund. The Regulated Fund's Board may refuse to approve, or at any time rescind, suspend or qualify, its approval of Pro Rata

securities are Tradable Securities [21] and the Disposition meets the other requirements of Condition 6(c)(ii). Pro Rata Dispositions and Dispositions of a Tradable Security remain subject to the Board's periodic review in accordance with Condition 10.

D. Delayed Settlement

16. Applicants represent that under the terms and Conditions of the Application, all Regulated Funds and Affiliated Funds participating in a Co-Investment Transaction will invest at the same time, for the same price and with the same terms, conditions, class, registration rights and any other rights, so that none of them receives terms more favorable than any other. However, the settlement date for an Affiliated Fund in a Co-Investment Transaction may occur up to ten business days after the settlement date for the Regulated Fund, and vice versa.[22] Nevertheless, in all cases, (i) the date on which the commitment of the Affiliated Funds and Regulated Funds is made will be the same even where the settlement date is not and (ii) the earliest settlement date and the latest settlement date of any Affiliated Fund or Regulated Fund participating in the transaction will occur within ten business days of each other.

E. Holders

17. Under Condition 15, if an Adviser, its principals, or any person controlling, controlled by, or under common control with the Adviser or its principals, and the Affiliated Funds (collectively, the ''Holders'') own in the aggregate more than 25 percent of the outstanding voting shares of a Regulated Fund (the ''Shares''), then the Holders will vote such Shares as directed by an independent third party when voting on matters specified in the Condition. Applicants believe that this Condition will ensure that the Independent Directors will act independently in evaluating Co-Investment Transactions, because the ability of the Adviser or its principals to influence the Independent Directors by a suggestion, explicit or implied, that the Independent Directors can be removed will be limited significantly. The Independent Directors shall evaluate and approve any independent party, taking into account its qualifications, reputation for independence, cost to the shareholders, and other factors that they deem relevant.

Applicants' Legal Analysis

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit participation by a registered investment company and an affiliated person in any ''joint enterprise or other joint arrangement or profit-sharing plan,'' as defined in the rule, without prior approval by the Commission by order upon application. Section 17(d) of the Act and rule 17d–1 under the Act are applicable to Regulated Funds that are registered closed-end investment companies.

2. Similarly, with regard to BDCs, section 57(a)(4) of the Act generally prohibits certain persons specified in section 57(b) from participating in joint transactions with the BDC or a company controlled by the BDC in contravention of rules as prescribed by the Commission. Section 57(i) of the Act provides that, until the Commission prescribes rules under section 57(a)(4), the Commission's rules under section 17(d) of the Act applicable to registered closed-end investment companies will be deemed to apply to transactions subject to section 57(a)(4). Because the Commission has not adopted any rules under section 57(a)(4), rule 17d–1 also applies to joint transactions with Regulated Funds that are BDCs.

3. Co-Investment Transactions are prohibited by either or both of Rule 17d–1 and Section 57(a)(4) without a prior exemptive order of the Commission to the extent that the Affiliated Funds and the Regulated Funds participating in such transactions fall within the category of persons described by Rule 17d–1 and/or Section 57(b), as applicable, vis-à-vis each participating Regulated Fund. Each of the participating Regulated Funds and Affiliated Funds may be deemed to be affiliated persons vis-à-vis a Regulated Fund within the meaning of Section 2(a)(3) by reason of common control because the Adviser manages each of the Affiliated Funds and may be deemed to control any Future Regulated Fund and any Future Affiliated Fund, and (ii) the Adviser manages Pharos pursuant to its investment advisory agreement. Thus, each of the Affiliated Funds could be deemed to be a person related to Pharos in a manner described by Section 57(b) and related to Future Regulated Funds in a manner described by Rule 17d–1; and therefore the prohibitions of Rule 17d–1 and Section 57(a)(4) would apply respectively to prohibit the Affiliated Funds from participating in Co-Investment Transactions with the Regulated Funds.

4. In passing upon applications under rule 17d–1, the Commission considers whether a company's participation in the joint transaction is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

5. Applicants state that in the absence of the requested relief, in many circumstances the Regulated Funds would be limited in their ability to participate in attractive and appropriate investment opportunities. Applicants state that, as required by Rule 17d–1(b), the Conditions ensure that the terms on which Co-Investment Transactions may be made will be consistent with the participation of the Regulated Funds being on a basis that it is neither different from nor less advantageous than other participants, thus protecting the equity holders of any participant from being disadvantaged. Applicants further state that the Conditions ensure that all Co-Investment Transactions are reasonable and fair to the Regulated Funds and their shareholders and do not involve overreaching by any person concerned, including the Advisers. Applicants state that the Regulated Funds' participation in the Co-Investment Transactions in accordance with the Conditions will be consistent with the provisions, policies, and purposes of the Act and would be done in a manner that is not different from, or less advantageous than, that of other participants.

Applicants' Conditions

Applicants agree that the Order will be subject to the following Conditions:

1. *Identification and Referral of Potential Co-Investment Transactions.*

Dispositions, in which case all subsequent Dispositions will be submitted to the Regulated Fund's Eligible Directors.

[21] ''Tradable Security'' means a security that meets the following criteria at the time of Disposition: (i) It trades on a national securities exchange or designated offshore securities market as defined in rule 902(b) under the Securities Act; (ii) it is not subject to restrictive agreements with the issuer or other security holders; and (iii) it trades with sufficient volume and liquidity (findings as to which are documented by the Advisers to any Regulated Funds holding investments in the issuer and retained for the life of the Regulated Fund) to allow each Regulated Fund to dispose of its entire position remaining after the proposed Disposition within a short period of time not exceeding 30 days at approximately the value (as defined by section 2(a)(41) of the Act) at which the Regulated Fund has valued the investment.

[22] Applicants state this may occur for two reasons. First, when the Affiliated Fund or Regulated Fund is not yet fully funded because, when the Affiliated Fund or Regulated Fund desires to make an investment, it must call capital from its investors to obtain the financing to make the investment, and in these instances, the notice requirement to call capital could be as much as ten business days. Second, where, for tax or regulatory reasons, an Affiliated Fund or Regulated Fund does not purchase new issuances immediately upon issuance but only after a short seasoning period of up to ten business days.

(a) The Advisers will establish, maintain and implement policies and procedures reasonably designed to ensure that each Adviser is promptly notified of all Potential Co-Investment Transactions that fall within the then-current Objectives and Strategies and Board-Established Criteria of any Regulated Fund the Adviser manages.

(b) When an Adviser to a Regulated Fund is notified of a Potential Co-Investment Transaction under Condition 1(a), the Adviser will make an independent determination of the appropriateness of the investment for the Regulated Fund in light of the Regulated Fund's then-current circumstances.

2. *Board Approvals of Co-Investment Transactions.*

(a) If the Adviser deems a Regulated Fund's participation in any Potential Co-Investment Transaction to be appropriate for the Regulated Fund, it will then determine an appropriate level of investment for the Regulated Fund.

(b) If the aggregate amount recommended by the Advisers to be invested in the Potential Co-Investment Transaction by the participating Regulated Funds and any participating Affiliated Funds, collectively, exceeds the amount of the investment opportunity, the investment opportunity will be allocated among them pro rata based on the size of the Internal Orders, as described in section III.A.1.b. of the application. Each Adviser to a participating Regulated Fund will promptly notify and provide the Eligible Directors with information concerning the Affiliated Funds' and Regulated Funds' order sizes to assist the Eligible Directors with their review of the applicable Regulated Fund's investments for compliance with these Conditions.

(c) After making the determinations required in Condition 1(b) above, each Adviser to a participating Regulated Fund will distribute written information concerning the Potential Co-Investment Transaction (including the amount proposed to be invested by each participating Regulated Fund and each participating Affiliated Fund) to the Eligible Directors of its participating Regulated Fund(s) for their consideration. A Regulated Fund will enter into a Co-Investment Transaction with one or more other Regulated Funds or Affiliated Funds only if, prior to the Regulated Fund's participation in the Potential Co-Investment Transaction, a Required Majority concludes that:

(i) the terms of the transaction, including the consideration to be paid, are reasonable and fair to the Regulated Fund and its equity holders and do not involve overreaching in respect of the Regulated Fund or its equity holders on the part of any person concerned;

(ii) the transaction is consistent with:

(A) The interests of the Regulated Fund's equity holders; and

(B) the Regulated Fund's then-current Objectives and Strategies;

(iii) the investment by any other Regulated Fund(s) or Affiliated Fund(s) would not disadvantage the Regulated Fund, and participation by the Regulated Fund would not be on a basis different from, or less advantageous than, that of any other Regulated Fund(s) or Affiliated Fund(s) participating in the transaction; provided that the Required Majority shall not be prohibited from reaching the conclusions required by this Condition 2(c)(iii) if:

(A) The settlement date for another Regulated Fund or an Affiliated Fund in a Co-Investment Transaction is later than the settlement date for the Regulated Fund by no more than ten business days or earlier than the settlement date for the Regulated Fund by no more than ten business days, in either case, so long as: (x) The date on which the commitment of the Affiliated Funds and Regulated Funds is made is the same; and (y) the earliest settlement date and the latest settlement date of any Affiliated Fund or Regulated Fund participating in the transaction will occur within ten business days of each other; or

(B) any other Regulated Fund or Affiliated Fund, but not the Regulated Fund itself, gains the right to nominate a director for election to a portfolio company's board of directors, the right to have a board observer or any similar right to participate in the governance or management of the portfolio company so long as: (x) The Eligible Directors will have the right to ratify the selection of such director or board observer, if any; (y) the Adviser agrees to, and does, provide periodic reports to the Regulated Fund's Board with respect to the actions of such director or the information received by such board observer or obtained through the exercise of any similar right to participate in the governance or management of the portfolio company; and (z) any fees or other compensation that any other Regulated Fund or Affiliated Fund or any affiliated person of any other Regulated Fund or Affiliated Fund receives in connection with the right of one or more Regulated Funds or Affiliated Funds to nominate a director or appoint a board observer or otherwise to participate in the governance or management of the portfolio company will be shared proportionately among any participating Affiliated Funds (who may, in turn, share their portion with their affiliated persons) and any participating Regulated Fund(s) in accordance with the amount of each such party's investment; and

(iv) the proposed investment by the Regulated Fund will not involve compensation, remuneration or a direct or indirect [23] financial benefit to the Advisers, any other Regulated Fund, the Affiliated Funds or any affiliated person of any of them (other than the parties to the Co-Investment Transaction), except (A) to the extent permitted by Condition 14, (B) to the extent permitted by Section 17(e) or 57(k), as applicable, (C) indirectly, as a result of an interest in the securities issued by one of the parties to the Co-Investment Transaction, or (D) in the case of fees or other compensation described in Condition 2(c)(iii)(B)(z).

3. *Right to Decline.* Each Regulated Fund has the right to decline to participate in any Potential Co-Investment Transaction or to invest less than the amount proposed.

4. *General Limitation.* Except for Follow-On Investments made in accordance with Conditions 8 and 9 below,[24] a Regulated Fund will not invest in reliance on the Order in any issuer in which a Related Party has an investment.[25]

5. *Same Terms and Conditions.* A Regulated Fund will not participate in any Potential Co-Investment Transaction unless (i) the terms, conditions, price, class of securities to be purchased, date on which the commitment is entered into and registration rights (if any) will be the same for each participating Regulated Fund and Affiliated Fund and (ii) the

[23] For example, procuring the Regulated Fund's investment in a Potential Co-Investment Transaction to permit an affiliate to complete or obtain better terms in a separate transaction would constitute an indirect financial benefit.

[24] This exception applies only to Follow-On Investments by a Regulated Fund in issuers in which that Regulated Fund already holds investments.

[25] ''Related Party'' means (i) any Close Affiliate and (ii) in respect of matters as to which any Adviser has knowledge, any Remote Affiliate. ''Close Affiliate'' means the Advisers, the Regulated Funds, the Affiliated Funds and any other person described in Section 57(b) (after giving effect to Rule 57b–1) in respect of any Regulated Fund (treating any registered investment company or series thereof as a BDC for this purpose) except for limited partners included solely by reason of the reference in Section 57(b) to Section 2(a)(3)(D). ''Remote Affiliate'' means any person described in Section 57(e) in respect of any Regulated Fund (treating any registered investment company or series thereof as a BDC for this purpose) and any limited partner holding 5% or more of the relevant limited partner interests that would be a Close Affiliate but for the exclusion in that definition.

earliest settlement date and the latest settlement date of any participating Regulated Fund or Affiliated Fund will occur as close in time as practicable and in no event more than ten business days apart. The grant to one or more Regulated Funds or Affiliated Funds, but not the respective Regulated Fund, of the right to nominate a director for election to a portfolio company's board of directors, the right to have an observer on the board of directors or similar rights to participate in the governance or management of the portfolio company will not be interpreted so as to violate this Condition 5, if Condition 2(c)(iii)(B) is met.

6. *Standard Review Dispositions.*

(a) *General.* If any Regulated Fund or Affiliated Fund elects to sell, exchange or otherwise dispose of an interest in a security and one or more Regulated Funds and Affiliated Funds have previously participated in a Co-Investment Transaction with respect to the issuer, then:

(i) The Adviser to such Regulated Fund or Affiliated Fund will notify each Regulated Fund that holds an investment in the issuer of the proposed Disposition at the earliest practical time; and

(ii) the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to participation by such Regulated Fund in the Disposition.

(b) *Same Terms and Conditions.* Each Regulated Fund will have the right to participate in such Disposition on a proportionate basis, at the same price and on the same terms and conditions as those applicable to the Affiliated Funds and any other Regulated Fund.

(c) *No Board Approval Required.* A Regulated Fund may participate in such a Disposition without obtaining prior approval of the Required Majority if:

(i) (A) The participation of each Regulated Fund and Affiliated Fund in such Disposition is proportionate to its then-current holding of the security (or securities) of the issuer that is (or are) the subject of the Disposition; [26] (B) the Board of the Regulated Fund has approved as being in the best interests of the Regulated Fund the ability to participate in such Dispositions on a pro rata basis (as described in greater detail in the application); and (C) the Board of the Regulated Fund is provided on a quarterly basis with a list of all Dispositions made in accordance with this Condition; or

(ii) each security is a Tradable Security and (A) the Disposition is not to the issuer or any affiliated person of the issuer; and (B) the security is sold for cash in a transaction in which the only term negotiated by or on behalf of the participating Regulated Funds and Affiliated Funds is price.

(d) *Standard Board Approval.* In all other cases, the Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors and the Regulated Fund will participate in such Disposition solely to the extent that a Required Majority determines that it is in the Regulated Fund's best interests.

7. *Enhanced Review Dispositions.*

(a) *General.* If any Regulated Fund or Affiliated Fund elects to sell, exchange or otherwise dispose of a Pre-Boarding Investment in a Potential Co-Investment Transaction and the Regulated Funds and Affiliated Funds have not previously participated in a Co-Investment Transaction with respect to the issuer:

(i) The Adviser to such Regulated Fund or Affiliated Fund will notify each Regulated Fund that holds an investment in the issuer of the proposed Disposition at the earliest practical time;

(ii) the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to participation by such Regulated Fund in the Disposition; and

(iii) the Advisers will provide to the Board of each Regulated Fund that holds an investment in the issuer all information relating to the existing investments in the issuer of the Regulated Funds and Affiliated Funds, including the terms of such investments and how they were made, that is necessary for the Required Majority to make the findings required by this Condition.

(b) *Enhanced Board Approval.* The Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors, and the Regulated Fund will participate in such Disposition solely to the extent that a Required Majority determines that:

(i) The Disposition complies with Conditions 2(c)(i), (ii), (iii)(A), and (iv); and

(ii) the making and holding of the Pre-Boarding Investments were not prohibited by Section 57 or Rule 17d–1, as applicable, and records the basis for the finding in the Board minutes.

(c) *Additional Requirements.* The Disposition may only be completed in reliance on the Order if:

(i) *Same Terms and Conditions.* Each Regulated Fund has the right to participate in such Disposition on a proportionate basis, at the same price and on the same terms and conditions as those applicable to the Affiliated Funds and any other Regulated Fund;

(ii) *Original Investments.* All of the Affiliated Funds' and Regulated Funds' investments in the issuer are Pre-Boarding Investments;

(iii) *Advice of counsel.* Independent counsel to the Board advises that the making and holding of the investments in the Pre-Boarding Investments were not prohibited by Section 57 (as modified by Rule 57b–1) or Rule 17d–1, as applicable;

(iv) *Multiple Classes of Securities.* All Regulated Funds and Affiliated Funds that hold Pre-Boarding Investments in the issuer immediately before the time of completion of the Co-Investment Transaction hold the same security or securities of the issuer. For the purpose of determining whether the Regulated Funds and Affiliated Funds hold the same security or securities, they may disregard any security held by some but not all of them if, prior to relying on the Order, the Required Majority is presented with all information necessary to make a finding, and finds, that: (x) Any Regulated Fund's or Affiliated Fund's holding of a different class of securities (including for this purpose a security with a different maturity date) is immaterial [27] in amount, including immaterial relative to the size of the issuer; and (y) the Board records the basis for any such finding in its minutes. In addition, securities that differ only in respect of issuance date, currency, or denominations may be treated as the same security; and

(v) *No control.* The Affiliated Funds, the other Regulated Funds and their affiliated persons (within the meaning of Section 2(a)(3)(C) of the Act), individually or in the aggregate, do not control the issuer of the securities (within the meaning of Section 2(a)(9) of the Act).

8. *Standard Review Follow-Ons.*

(a) *General.* If any Regulated Fund or Affiliated Fund desires to make a Follow-On Investment in an issuer and the Regulated Funds and Affiliated Funds holding investments in the issuer previously participated in a Co-

[26] In the case of any Disposition, proportionality will be measured by each participating Regulated Fund's and Affiliated Fund's outstanding investment in the security in question immediately preceding the Disposition.

[27] In determining whether a holding is ''immaterial'' for purposes of the Order, the Required Majority will consider whether the nature and extent of the interest in the transaction or arrangement is sufficiently small that a reasonable person would not believe that the interest affected the determination of whether to enter into the transaction or arrangement or the terms of the transaction or arrangement.

Investment Transaction with respect to the issuer:

(i) The Adviser to each such Regulated Fund or Affiliated Fund will notify each Regulated Fund that holds securities of the portfolio company of the proposed transaction at the earliest practical time; and

(ii) the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to the proposed participation, including the amount of the proposed investment, by such Regulated Fund.

(b) *No Board Approval Required.* A Regulated Fund may participate in the Follow-On Investment without obtaining prior approval of the Required Majority if:

(i) (A) The proposed participation of each Regulated Fund and each Affiliated Fund in such investment is proportionate to its outstanding investments in the issuer or the security at issue, as appropriate,[28] immediately preceding the Follow-On Investment; and (B) the Board of the Regulated Fund has approved as being in the best interests of the Regulated Fund the ability to participate in Follow-On Investments on a pro rata basis (as described in greater detail in the Application); or

(ii) it is a Non-Negotiated Follow-On Investment.

(c) *Standard Board Approval.* In all other cases, the Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors and the Regulated Fund will participate in such Follow-On Investment solely to the extent that a Required Majority makes the determinations set forth in Condition 2(c). If the only previous Co-Investment Transaction with respect to the issuer was an Enhanced Review Disposition the Eligible Directors must complete this review of the proposed Follow-On Investment both on a stand-alone basis and together with the Pre-Boarding Investments in relation to the total economic exposure and other terms of the investment.

(d) *Allocation.* If, with respect to any such Follow-On Investment:

(i) The amount of the opportunity proposed to be made available to any Regulated Fund is not based on the Regulated Funds' and the Affiliated Funds' outstanding investments in the issuer or the security at issue, as appropriate, immediately preceding the Follow-On Investment; and

(ii) the aggregate amount recommended by the Advisers to be invested in the Follow-On Investment by the participating Regulated Funds and any participating Affiliated Funds, collectively, exceeds the amount of the investment opportunity, then the Follow-On Investment opportunity will be allocated among them *pro rata* based on the size of the Internal Orders, as described in section III.A.1.b. of the application.

(e) *Other Conditions.* The acquisition of Follow-On Investments as permitted by this Condition will be considered a Co-Investment Transaction for all purposes and subject to the other Conditions set forth in the application.

9. *Enhanced Review Follow-Ons.*

(a) *General.* If any Regulated Fund or Affiliated Fund desires to make a Follow-On Investment in an issuer that is a Potential Co-Investment Transaction and the Regulated Funds and Affiliated Funds holding investments in the issuer have not previously participated in a Co-Investment Transaction with respect to the issuer:

(i) The Adviser to each such Regulated Fund or Affiliated Fund will notify each Regulated Fund that holds securities of the portfolio company of the proposed transaction at the earliest practical time;

(ii) the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to the proposed participation, including the amount of the proposed investment, by such Regulated Fund; and

(iii) the Advisers will provide to the Board of each Regulated Fund that holds an investment in the issuer all information relating to the existing investments in the issuer of the Regulated Funds and Affiliated Funds, including the terms of such investments and how they were made, that is necessary for the Required Majority to make the findings required by this Condition.

(b) *Enhanced Board Approval.* The Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors, and the Regulated Fund will participate in such Follow-On Investment solely to the extent that a Required Majority reviews the proposed Follow-On Investment both on a stand-alone basis and together with the Pre-Boarding Investments in relation to the total economic exposure and other terms and makes the determinations set forth in Condition 2(c). In addition, the Follow-On Investment may only be completed in reliance on the Order if the Required Majority of each participating Regulated Fund determines that the making and holding of the Pre-Boarding Investments were not prohibited by Section 57 (as modified by Rule 57b–1) or Rule 17d–1, as applicable. The basis for the Board's findings will be recorded in its minutes.

(c) *Additional Requirements.* The Follow-On Investment may only be completed in reliance on the Order if:

(i) *Original Investments.* All of the Affiliated Funds' and Regulated Funds' investments in the issuer are Pre-Boarding Investments;

(ii) *Advice of counsel.* Independent counsel to the Board advises that the making and holding of the investments in the Pre-Boarding Investments were not prohibited by Section 57 (as modified by Rule 57b–1) or Rule 17d–1, as applicable;

(iii) *Multiple Classes of Securities.* All Regulated Funds and Affiliated Funds that hold Pre-Boarding Investments in the issuer immediately before the time of completion of the Co-Investment Transaction hold the same security or securities of the issuer. For the purpose of determining whether the Regulated Funds and Affiliated Funds hold the same security or securities, they may disregard any security held by some but not all of them if, prior to relying on the Order, the Required Majority is presented with all information necessary to make a finding, and finds, that: (x) Any Regulated Fund's or Affiliated Fund's holding of a different class of securities (including for this purpose a security with a different maturity date) is immaterial in amount, including immaterial relative to the size of the issuer; and (y) the Board records the basis for any such finding in its minutes. In addition, securities that differ only in respect of issuance date, currency, or denominations may be treated as the same security; and

(iv) *No control.* The Affiliated Funds, the other Regulated Funds and their affiliated persons (within the meaning of Section 2(a)(3)(C) of the Act), individually or in the aggregate, do not control the issuer of the securities (within the meaning of Section 2(a)(9) of the Act).

(d) *Allocation.* If, with respect to any such Follow-On Investment:

[28] To the extent that a Follow-On Investment opportunity is in a security or arises in respect of a security held by the participating Regulated Funds and Affiliated Funds, proportionality will be measured by each participating Regulated Fund's and Affiliated Fund's outstanding investment in the security in question immediately preceding the Follow-On Investment using the most recent available valuation thereof. To the extent that a Follow-On Investment opportunity relates to an opportunity to invest in a security that is not in respect of any security held by any of the participating Regulated Funds or Affiliated Funds, proportionality will be measured by each participating Regulated Fund's and Affiliated Fund's outstanding investment in the issuer immediately preceding the Follow-On Investment using the most recent available valuation thereof.

(i) The amount of the opportunity proposed to be made available to any Regulated Fund is not based on the Regulated Funds' and the Affiliated Funds' outstanding investments in the issuer or the security at issue, as appropriate, immediately preceding the Follow-On Investment; and

(ii) the aggregate amount recommended by the Advisers to be invested in the Follow-On Investment by the participating Regulated Funds and any participating Affiliated Funds, collectively, exceeds the amount of the investment opportunity, then the Follow-On Investment opportunity will be allocated among them pro rata based on the size of the Internal Orders, as described in section III.A.1.(b) of the application.

(e) *Other Conditions.* The acquisition of Follow-On Investments as permitted by this Condition will be considered a Co-Investment Transaction for all purposes and subject to the other Conditions set forth in the application.

10. *Board Reporting, Compliance and Annual Re-Approval.*

(a) Each Adviser to a Regulated Fund will present to the Board of each Regulated Fund, on a quarterly basis, and at such other times as the Board may request, (i) a record of all investments in Potential Co-Investment Transactions made by any of the other Regulated Funds or any of the Affiliated Funds during the preceding quarter that fell within the Regulated Fund's then-current Objectives and Strategies and Board-Established Criteria that were not made available to the Regulated Fund, and an explanation of why such investment opportunities were not made available to the Regulated Fund; (ii) a record of all Follow-On Investments in and Dispositions of investments in any issuer in which the Regulated Fund holds any investments by any Affiliated Fund or other Regulated Fund during the prior quarter; and (iii) all information concerning Potential Co-Investment Transactions and Co-Investment Transactions, including investments made by other Regulated Funds or Affiliated Funds that the Regulated Fund considered but declined to participate in, so that the Independent Directors, may determine whether all Potential Co-Investment Transactions and Co-Investment Transactions during the preceding quarter, including those investments that the Regulated Fund considered but declined to participate in, comply with the Conditions.

(b) All information presented to the Regulated Fund's Board pursuant to this Condition will be kept for the life of the Regulated Fund and at least two years thereafter, and will be subject to examination by the Commission and its staff.

(c) Each Regulated Fund's chief compliance officer, as defined in rule 38a–1(a)(4), will prepare an annual report for its Board each year that evaluates (and documents the basis of that evaluation) the Regulated Fund's compliance with the terms and Conditions of the application and the procedures established to achieve such compliance.

(d) The Independent Directors will consider at least annually whether continued participation in new and existing Co-Investment Transactions is in the Regulated Fund's best interests.

11. *Record Keeping.* Each Regulated Fund will maintain the records required by Section 57(f)(3) of the Act as if each of the Regulated Funds were a BDC and each of the investments permitted under these Conditions were approved by the Required Majority under Section 57(f).

12. *Director Independence.* No Independent Director of a Regulated Fund will also be a director, general partner, managing member or principal, or otherwise be an ''affiliated person'' (as defined in the Act) of any Affiliated Fund.

13. *Expenses.* The expenses, if any, associated with acquiring, holding or disposing of any securities acquired in a Co-Investment Transaction (including, without limitation, the expenses of the distribution of any such securities registered for sale under the Securities Act) will, to the extent not payable by the Advisers under their respective advisory agreements with the Regulated Funds and the Affiliated Funds, be shared by the Regulated Funds and the participating Affiliated Funds in proportion to the relative amounts of the securities held or being acquired or disposed of, as the case may be.

14. *Transaction Fees.*[29] Any transaction fee (including break-up, structuring, monitoring or commitment fees but excluding brokerage or underwriting compensation permitted by Section 17(e) or 57(k)) received in connection with any Co-Investment Transaction will be distributed to the participants on a pro rata basis based on the amounts they invested or committed, as the case may be, in such Co-Investment Transaction. If any transaction fee is to be held by an Adviser pending consummation of the transaction, the fee will be deposited into an account maintained by the Adviser at a bank or banks having the qualifications prescribed in Section 26(a)(1), and the account will earn a competitive rate of interest that will also be divided pro rata among the participants. None of the Advisers, the Affiliated Funds, the other Regulated Funds or any affiliated person of the Affiliated Funds or the Regulated Funds will receive any additional compensation or remuneration of any kind as a result of or in connection with a Co-Investment Transaction other than (i) in the case of the Regulated Funds and the Affiliated Funds, the pro rata transaction fees described above and fees or other compensation described in Condition 2(c)(iii)(B)(z), (ii) brokerage or underwriting compensation permitted by Section 17(e) or 57(k) or (iii) in the case of the Advisers, investment advisory compensation paid in accordance with investment advisory agreements between the applicable Regulated Fund(s) or Affiliated Fund(s) and its Adviser.

15. *Independence.* If the Holders own in the aggregate more than 25 percent of the Shares of a Regulated Fund, then the Holders will vote such Shares as directed by an independent third party when voting on (1) the election of directors; (2) the removal of one or more directors; or (3) any other matter under either the Act or applicable State law affecting the Board's composition, size or manner of election.

For the Commission, by the Division of Investment Management, under delegated authority.

Eduardo A. Aleman,

Deputy Secretary.

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BILLING CODE 8011–01–P

[29] Applicants are not requesting and the Commission is not providing any relief for transaction fees received in connection with any Co-Investment Transaction.

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

Extension:

Form N–MFP and Rule 30b1–7, SEC File No. 270–604, OMB Control No. 3235–0657

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection

of information to the Office of Management and Budget (''OMB'') for extension and approval.

Section 30(b) of the Investment Company Act of 1940 (''Investment Company Act'') [1] provides that ''[e]very registered investment company shall file with the Commission . . . such information, documents, and reports (other than financial statements), as the Commission may require to keep reasonably current the information and documents contained in the registration statement of such company . . . .'' [2] Rule 30b1–7 under the Investment Company Act, entitled ''Monthly Report for Money Market Funds,'' provides that every registered investment company, or series thereof, that is regulated as a money market funds under rule 2a–7 [3] must file with the Commission a monthly report of portfolio holdings on Form N–MFP [4] no later than the fifth business day of each month.[5] Form N–MFP sets forth the specific disclosure items that money market funds must provide. Filers must submit this report electronically using the Commission's electronic filing system (''EDGAR'') in Extensible Markup Language (''XML'') format.

Compliance with rule 30b1–7 is mandatory for any fund that holds itself out as a money market fund in reliance on rule 2a–7. Responses to the disclosure requirements will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The following estimates of average burden hours and costs are made solely for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even representative survey or study of the cost of Commission rules and forms. A fund must comply with the requirement to prepare Form N–MFP in order to hold itself out to investors as a money market fund or the equivalent of a money market fund in reliance on rule 2a–7. The collection of information is mandatory for money market funds that rely on rule 2a–7, and responses to the information collections will not be kept confidential.

The Commission estimates there are currently 429 [6] money market funds that report information on Form N–MFP, with approximately 10 [7] of them being new money market funds that are filing reports on Form N–PORT for the first time.

We estimate that 35% of money market funds (or 150 money market funds, broken down into 146 existing funds and 4 new funds) [8] license a software solution and file reports on Form N–MFP in house; we further estimate that each fund that files reports on Form N–MFP in house requires an average of approximately 47 burden hours to compile (including review of the information), tag, and electronically file the Form N–MFP for the first time and an average of approximately 13 burden hours for subsequent filings.[9] Therefore, we estimate the per fund average annual hour burden is 96 hours [10] for existing funds and 130 hours [11] for new money market funds. Based on an estimate of 146 existing fund filers and 4 new fund filers each year, we estimate that filing reports on Form N–MFP in house takes 23,536 hours and costs funds, in aggregate, $6,754,832 per year.[12]

We estimate that 65% of money market funds (or 279 money market funds, broken down into 272 existing fund and 7 new funds) [13] retain the services of a third party to provide data aggregation and validation services as part of the preparation and filing of reports on Form N–MFP on the fund's behalf; we further estimate that each fund requires an average of approximately 26 burden hours to compile and review the information with the service provider prior to electronically filing the report for the first time and an average of approximately 9 burden hours for subsequent filings. Therefore, we estimate the per fund average annual hour burden is 108 hours [14] for existing funds and 125 hours [15] for new money market funds. Based on an estimate of 272 existing fund filers and 7 new fund filers each year, we estimate that filing reports on Form N–MFP using a service provider takes 41,131 hours and costs funds, in aggregate, $8,682,037 per year.[16] In sum, we estimate that filing

[1] 15 U.S.C. 80a–1 *et seq.*

[2] 15 U.S.C. 80a–30(b).

[3] 17 CFR 270.2a–7.

[4] 17 CFR 274.201.

[5] 17 CFR 270.30b1–7.

[6] This estimate is based on staff review of reports on Form N–MFP filed with the Commission for the month ended February 28, 2018.

[7] This estimate is based on staff review of reports on Form N–MFP filed with the Commission for 2015 (1 new filer), 2016 (23 new filers), and 2017 (6 new filers). Amortizing those numbers over three years provides an estimate of 10 new filers per year.

[8] The estimate is based on the following calculation: (429 money market funds × 35% = 150 money market funds. Of that amount, we estimate that 4 are new money market funds (10 new money market fund filers each year × 35% = 3.5 funds, rounded to 4). Therefore, 150 money market funds − 4 new money market funds = 146 existing money market funds.

[9] We understand that the required information is currently maintained by money market funds pursuant to other regulatory requirements or in the ordinary course of business. Accordingly, for the purposes of our analysis, we do not ascribe any time to producing the required information.

[10] This estimate is based on the following calculation: 12 filings per year × 13 burden hours per filing = 156 burden hours per year.

[11] This estimate is based on the following calculation: (First month's initial filing × 47 burden hours) + (11 subsequent month filings × 13 burden hours per filing) = 190 burden hours per year.

[12] These estimates are based on the following calculations: Existing fund filers: (156 hours × blended hourly rate of $287 for a Financial Reporting Manager ($280 per hour), Fund Senior Accountant ($209 per hour), Senior Database Administrator ($329 per hour), Senior Portfolio Manager ($317 per hour), Compliance Manager ($298 per hour)) = $44,772. The blended hourly rate was calculated as ($280 + $209 + $329 + $317 + 209)/5 = $287. There are 146 existing money market funds who use in house solutions × 156 hours with a monetized cost of $44,772 per fund = 22,776 hours with a monetized cost of $6,536,712.

New money market fund filers: (190 hours × blended hourly rate of $287 for a Financial Reporting Manager ($280 per hour), Fund Senior Accountant ($209 per hour), Senior Database Administrator ($329 per hour), Senior Portfolio Manager ($317 per hour), Compliance Manager ($298 per hour)) = $54,530. The blended hourly rate was calculated as ($280 + $209 + $329 + $317 + 209)/5 = $287. Four new money market funds × 190 hours with a monetized cost of $54,530 per fund = 760 hours with a monetized cost of $218,120.

Aggregate annual hourly burden for all funds filing reports on Form N–MFP in house: 22,776 hours + 760 hours = 23,536 hours.

Aggregate annual costs for all funds filing reports on Form N–MFP in house: $6,536,712 + $218,120= $6,754,832.

[13] The estimate is based on the following calculation: (429 money market funds × 65% = 279 money market funds. Of that amount, we estimate that 7 are new money market funds (10 new money market fund filers each year × 65% = 6.5 funds, rounded to 7). Therefore, 279 money market funds − 7 new money market funds = 272 existing money market funds.

[14] This estimate is based on the following calculation: 12 filings per year × 9 burden hours per filing = 108 burden hours per year.

[15] This estimate is based on the following calculation: (First month's initial filing × 26 burden hours) + (11 subsequent month filings × 9 burden hours per filing) = 125 burden hours per year.

[16] These estimates are based on the following calculations: Existing fund filers: (108 hours × blended hourly rate of $287 for a Financial Reporting Manager ($280 per hour), Fund Senior Accountant ($209 per hour), Senior Database Administrator ($329 per hour), Senior Portfolio Manager ($317 per hour), Compliance Manager ($298 per hour)) = $30,996. The blended hourly rate was calculated as ($280 + $209 + $329 + $317 + 209)/5 = $287. There are 272 existing money market funds who use a third-party service provider × 148 hours with a monetized cost of $30,996 per fund = 40,256 hours with a monetized cost of $8,430,912.

New money market fund filers: (125 hours × blended hourly rate of $287 for a Financial Reporting Manager ($280 per hour), Fund Senior Accountant ($209 per hour), Senior Database Administrator ($329 per hour), Senior Portfolio Manager ($317 per hour), Compliance Manager ($298 per hour)) = $35,875. The blended hourly rate was calculated as ($280 + $209 + $329 + $317 + 209)/5 = $287. Seven new money market funds × 125 hours with a monetized cost of $35,875 per fund = 875 hours with a monetized cost of $251,125.

reports on Form N–MFP imposes a total annual hour burden of 64,667 hours,[17] at an aggregate cost of $15,436,869 on all money market funds.[18]

Cost to Respondents

Cost burden is the cost of goods and services purchased in connection with complying with the collection of information requirements of rule 30b1–7 and Form N–MFP. The cost burden does not include the cost of the hour burden discussed in Item 12 above.

Based on discussions with industry participants, we estimate that money market funds that file reports on Form N–MFP in house license a third-party software solution to assist in filing their reports at an average cost of $3,900 per fund per year. In addition, we estimate that money market funds that use a service provider to prepare and file reports on Form N–MFP pay an average fee of $9,300 per fund per year. In sum, we estimate that all money market funds incur on average, in the aggregate, external annual costs of $3,179,700.[19]

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information 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 in writing within 60 days of this publication.

Please direct your written comments to Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, C/O Candace Kenner, 100 F Street NE, Washington, DC 20549; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: February 11, 2019.

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–02307 Filed 2–13–19; 8:45 am]

BILLING CODE 8011–01–P

Aggregate annual hourly burden for all funds filing reports on Form N–MFP in house: 40,256 hours + 875 hours = 41,131 hours.

Aggregate annual costs for all funds filing reports on Form N–MFP in house: $8,430,912 + $251,125= $8,682,037.

[17] This estimate is based on the following calculation: 23,536 hours for filers licensing a software solution and filing in-house + 41,131 hours for filers using a third-party service provider = 64,667 hours in total.

[18] This estimate is based on the following calculation: $6,754,832 (in-house filers) + $8,682,037 (filers using a service provider) = $15,436,869.

[19] This estimate is based on the following calculation: (150 money market funds (146 existing funds + 4 new funds) that file reports on Form N–MFP in house × $3,900 per fund, per year) + (279 money market funds (272 existing funds + 7 new funds) that file reports on Form N–MFP using a service provider × $9,300 per fund, per year) = $3,179,700.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85082; File No. SR–C2–2019–002]

Self-Regulatory Organizations; Cboe C2 Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Options Regulatory Fee

February 8, 2019.

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 January 29, 2019, 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, 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

Cboe C2 Exchange, Inc. (the ''Exchange'' or ''C2 Options'') proposes to amend its Fees Schedule relating to the Options Regulatory Fee. 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://markets.cboe.com/us/options/regulation/rule_filings/ctwo/*), 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to increase the Options Regulatory Fee (''ORF'') from $.0011 per contract to $.0012 per contract in order to help ensure that revenue collected from the ORF, in combination with other regulatory fees and fines, meets the Exchange's total regulatory costs.

The ORF is assessed by C2 Options to each Trading Permit Holder (''TPH'') for options transactions cleared by the TPH that are cleared by the Options Clearing Corporation (OCC) in the customer range, regardless of the exchange on which the transaction occurs. In other words, the Exchange imposes the ORF on all customer-range transactions cleared by a TPH, even if the transactions do not take place on the Exchange. The ORF is collected by OCC on behalf of the Exchange from the Clearing Trading Permit Holder (''CTPH'') or non-CTPH that ultimately clears the transaction. With respect to linkage transactions, C2 Options reimburses its routing broker providing Routing Services pursuant to C2 Options Rule 6.15 for options regulatory fees it incurs in connection with the Routing Services it provides.

Revenue generated from ORF, when combined with all of the Exchange's other regulatory fees and fines, is designed to recover a material portion of the regulatory costs to the Exchange of the supervision and regulation of TPH customer options business. Regulatory costs include direct regulatory expenses and certain indirect expenses for work allocated in support of the regulatory function. The direct expenses include in-house and third party service provider costs to support the day to day regulatory work such as surveillances, investigations and examinations. The indirect expenses include support from such areas as human resources, legal, information technology and accounting. These indirect expenses are estimated to be approximately 4% of C2 Options' total regulatory costs for 2019. Thus, direct expenses are estimated to be approximately 96% of total regulatory costs for 2019. In addition, it is C2 Options' practice that revenue generated from ORF not exceed more than 75% of total annual regulatory costs. These

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

expectations are estimated, preliminary and may change. There can be no assurance that our final costs for 2019 will not differ materially from these expectations and prior practice; however, the Exchange believes that revenue generated from the ORF, when combined with all of the Exchange's other regulatory fees and fines, will cover a material portion, but not all, of the Exchange's regulatory costs.

The Exchange also notes that its regulatory responsibilities with respect to TPH compliance with options sales practice rules have largely been allocated to FINRA under a 17d–2 agreement.[3] The ORF is not designed to cover the cost of that options sales practice regulation.

The Exchange will continue to monitor the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed the Exchange's total regulatory costs. The Exchange monitors its regulatory costs and revenues at a minimum on a semi-annual basis. If the Exchange determines regulatory revenues exceed or are insufficient to cover a material portion of its regulatory costs, the Exchange will adjust the ORF by submitting a fee change filing to the Commission. The Exchange notifies TPHs of adjustments to the ORF via regulatory circular. The Exchange endeavors to provide TPHs with such notice at least 30 calendar days prior to the effective date of the change.

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.[4] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[5] which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its TPHs and other persons using its facilities. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[6] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes the proposed fee change is reasonable because it would help ensure that revenue collected from the ORF, in combination with other regulatory fees and fines, does not exceed the Exchange's total regulatory costs. Moreover, the Exchange believes the ORF ensures fairness by assessing higher fees to those TPHs that require more Exchange regulatory services based on the amount of customer options business they conduct. Regulating customer trading activity is much more labor intensive and requires greater expenditure of human and technical resources than regulating non-customer trading activity, which tends to be more automated and less labor-intensive. As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-customer component (*e.g.,* TPH proprietary transactions) of its regulatory program.[7] The Exchange believes the proposed fee change is equitable and not unfairly discriminatory in that it is charged to all TPHs on all their transactions that clear in the customer range at the OCC.

The Exchange believes the proposal to eliminate obsolete language with respect to past ORF rates maintains clarity in the rules and alleviates potential confusion, thereby protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. This proposal does not create an unnecessary or inappropriate intra-market burden on competition because the ORF applies to all customer activity, thereby raising regulatory revenue to offset regulatory expenses. It also supplements the regulatory revenue derived from non-customer activity. This proposal does not create an unnecessary or inappropriate inter-market burden on competition because it is a regulatory fee that supports regulation in furtherance of the purposes of the Act. The Exchange is obligated to ensure that the amount of regulatory revenue collected from the ORF, in combination with its other regulatory fees and fines, does not exceed regulatory costs.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and paragraph (f) of Rule 19b–4[9] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File No. SR–C2–2019–002 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File No. SR–C2–2019–002. 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

[3] *See* Securities Exchange Act Release No. 76309 (October 29, 2015), 80 FR 68361 (November 4, 2015).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78f(b)(5).

[7] If the Exchange changes its method of funding regulation or if circumstances otherwise change in the future, the Exchange may decide to modify the ORF or assess a separate regulatory fee on TPH proprietary transactions if the Exchange deems it advisable.

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f).

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 No. SR–C2–2019–002, and should be submitted on or before March 7, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–02288 Filed 2–13–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Extension:

Form T–1, SEC File No. 270–121, OMB Control No. 3235–0110.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Form T–1 (17 CFR 269.1) is a statement of eligibility and qualification under the Trust Indenture Act of 1939 (15 U.S.C. 77aaa *et seq.*) of a corporation designated to act as a trustee under an indenture. The information is used to determine whether the corporation is qualified to serve as a trustee. Form T–1 is filed on occasion. The information required by Form T–1 is mandatory. This information is publicly available on EDGAR. Form T–1 takes approximately 15 hours per response to prepare and is filed by approximately 2 respondents. We estimate that 25% of the 15 hours (4 hours) is prepared by the company for a total annual reporting burden of 8 hours (4 hours per response × 2 responses).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following website, *www.reginfo.gov* . Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Lindsay.M.Abate@omb.eop.gov*; and (ii) Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Candace Kenner, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: February 11, 2019.

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–02313 Filed 2–13–19; 8:45 am]

BILLING CODE 8011–01–P

[10] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 10676]

Notice of Determinations; Culturally Significant Objects Imported for Exhibition—Determinations: ''The Book of Beasts: The Bestiary in the Medieval World'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that the objects to be exhibited in the exhibition ''The Book of Beasts: The Bestiary in the Medieval World,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The J. Paul Getty Museum at the Getty Center, Los Angeles, California, from on or about May 14, 2019, until on or about August 18, 2019, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000.

Marie Therese Porter Royce,

Assistant Secretary, Educational and Cultural Affairs, Department of State.

[FR Doc. 2019–02234 Filed 2–13–19; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 10675]

Notice of Determinations; Culturally Significant Objects Imported for Exhibition—Determinations: ''Vincent van Gogh: His Life in Art'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that the objects to be exhibited in the exhibition ''Vincent van Gogh: His Life in Art,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Museum of Fine Arts, Houston, in Houston, Texas, from on or about March 10, 2019, until on or about June 27, 2019, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made

pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000.

Marie Therese Porter Royce,

Assistant Secretary, Educational and Cultural Affairs, Department of State.

[FR Doc. 2019–02233 Filed 2–13–19; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Hazardous Materials Training Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval for to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on November 02, 2018. This collection involves FAA certification process requirements for operators and repair stations who are required to submit documentation related to hazardous materials training programs.

DATES: Written comments should be submitted by March 18, 2019.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

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 FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA 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.

FOR FURTHER INFORMATION CONTACT: Barbara Hall at (940) 594–5913, or by email at: *Barbara.L.Hall@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0705.

Title: Hazardous Materials Training Requirements.

Form Numbers: There are no FAA forms associated with this collection of information.

Type of Review: Renewal of an information collection.

Background: The FAA, as prescribed in 14 CFR parts 121 and 135, requires certificate holders to submit manuals and hazardous materials (hazmat) training programs, or revisions to an approved hazmat training program to obtain initial and final approval as part of the FAA certification process. Original certification is completed in accordance with 14 CFR part 119. Continuing certification is completed in accordance with 14 CFR parts 121 and 135. The FAA uses the approval process to determine compliance of the hazmat training programs with the applicable regulations, national policies and safe operating practices. The FAA must ensure that the documents adequately establish safe operating procedures. Additionally, 14 CFR part 145 requires certain repair stations to provide documentation showing that persons handling hazmat for transportation have been trained following DOT guidelines.

Respondents: Part 121, 135, and 145 certificate holders. Approximately 2,800.

Information is collected on occasion. Part 121 and part 135 operators are required to submit documentation of their hazardous materials training to receive original certification. If the operator decides to make a change to their training program, they must provide the updated manual. Part 145 repair station is required to submit a statement to the FAA certifying that all of their hazmat employees are trained under the Hazardous Materials Regulations prior to receiving their initial part 145 certificate.

Estimated Average Burden per Response: The amount of time per response is expected to vary. For example, new responses take significantly longer than revisions. Furthermore, operators with will-carry hazardous materials operations are anticipated to have longer responses than will-not carry hazardous materials operations. Part 145 repair stations will require less time to develop a certification statements than operators require to develop a manual. Additionally certificate holders vary in the type and size of the operations. Certificate holders are not anticipated to spend the same amount of time each year. Therefore, based on FAA's subject matter expertise we continue to expect reporting to take an average .6 hours, and recordkeeping to take .7 hours for a total of 1.3 hours per response. These are an annualized average which account for the wide variability in the type, complexity and size of operation. Additionally, the type of update can vary. Operators may make minor revisions to the manual, or they may choose to make more significant changes reflecting a larger change in their operations.

Estimated Total Annual Burden: 7,300 hours.

Issued in Washington, DC, on December 10, 2018.

Barbara Hall,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, ASP–110.

[FR Doc. 2019–02306 Filed 2–13–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2018–0109]

Pipeline Safety: Information Collection Activities, Gas and Liquid Pipeline Safety Program Certification

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the information collection request abstracted below is being forwarded to the Office of Management and Budget (OMB) for review and comment. PHMSA proposes revising certain parts of both the Natural Gas and Hazardous Liquid Base Grant Progress reports to make the data collected consistent with the data collected through the Pipeline Data Mart. A **Federal Register** notice with a

60-day comment period soliciting comments on the information collection was published on November 26, 2018.

DATES: Interested persons are invited to submit comments on or before March 18, 2019.

FOR FURTHER INFORMATION CONTACT: Angela Hill by telephone at 202–366–1246, by email at *angela.dow@dot.gov,* or by mail at DOT, PHMSA, 1200 New Jersey Avenue SE, PHP–30, Washington, DC 20590–0001.

ADDRESSES: Submit comments regarding the burden estimate, including suggestions for reducing the burden, to the Office of Management and Budget, Attention: Desk Officer for the Office of the Secretary of Transportation, 725 17th Street NW, Washington, DC 20503.

SUPPLEMENTARY INFORMATION: Section 1320.8(d), Title 5, Code of Federal Regulations, requires PHMSA to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. In accordance with this regulation, on November 26, 2018, (83 FR 60557) PHMSA published a **Federal Register** notice with a 60-day comment period soliciting comments on the information collection. In response, PHMSA received comments from the Pipeline Safety Trust and Vectren Corporation. The Pipeline Safety Trust requests that PHMSA add additional reporting requirements to this information collection to improve PHMSA's oversight of state grants and to fill agency-identified data gaps. Vectren Corporation supports the information collection, but notes that it could be improved by more detailed reporting instructions and more specific, consistent definitions for data and reporting.

The data obtained from this information collection reflects State Program activities that measure program performance and how grant funds are being used. Separate efforts are currently underway to address the feasibility study of a Nationwide Integrated Pipeline Safety Regulatory Database and all options are being considered to help with this process. PHMSA also streamlined data fields in both the Natural Gas and Hazardous Liquid Base Grant Progress Reports to make the forms easier to read and follow.

A summary of changes is below:

- Gas LNG operator categories listed together instead of separately.
- Hazardous liquid operator categories renamed to be consistent with Pipeline DataMart.
- Incident/Accident cause listing updated to match annual reports and Pipeline DataMart.
- Updated maximum civil penalties to current DOT level.

The burden for this information collected has also been updated to account for a more accurate number of submissions received annually. PHMSA previously expected to receive 116 responses to this information collection request. PHMSA has since updated that estimate to 66 responses (51 gas programs and 15 hazardous liquid programs). The estimated time burden for completing the annual submission is 58.5 hours. PHMSA will submit the information collection, as described below, to OMB for approval.

The following information is provided for this information collection: (1) Title of the information collection; (2) OMB control number; (3) Current expiration date; (4) Type of request; (5) Abstract of the information collection activity; (6) Description of affected public; (7) Estimate of total annual reporting and recordkeeping burden; and (8) Frequency of collection.

PHMSA will request a three-year term of approval for the following information collection:

Title: Gas Pipeline Safety Program Certification and Hazardous Liquid Pipeline Safety Program Certification.

OMB Control Number: 2137–0584.

Current Expiration Date: 02/28/2019.

Abstract: A state must submit an annual certification to assume responsibility for regulating intrastate pipelines. Certain records must be maintained to demonstrate that the state is ensuring satisfactory compliance with the pipeline safety regulations. PHMSA uses this information to evaluate a state's eligibility to receive federal grants.

Affected Public: State governments.

Annual Reporting and Recordkeeping Burden:

Total Annual Responses: 66.

Total Annual Burden Hours: 3,861.

Frequency of Collection: Annually.

Comments to Office of Management and Budget are invited on:

(a) The need for the proposed information, including whether the information will have practical utility in helping the agency to achieve its pipeline safety goals;

(b) The accuracy of the agency's estimate of the burden of the proposed collection;

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

(d) Ways to minimize the burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued in Washington, DC, on February 11, 2019, under authority delegated in 49 CFR 1.97.

John A. Gale,

Director, Standards and Rulemaking Division.

[FR Doc. 2019–02316 Filed 2–13–19; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Revision; Comment Request; Regulation C—Home Mortgage Disclosure

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection as required by the Paperwork Reduction Act of 1995 (PRA).

An agency may not conduct or sponsor, and respondents are not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The OCC is soliciting comment concerning the revision of the information collection titled ''Regulation C—Home Mortgage Disclosure.''

DATES: Comments must be submitted on or before April 15, 2019.

ADDRESSES: Commenters are encouraged to submit comments by email, if possible. You may submit comments by any of the following methods:

- *Email: prainfo@occ.treas.gov.*
- *Mail:* Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557–NEW, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Fax:* (571) 465–4326.

Instructions: You must include ''OCC'' as the agency name and 1557–NEW, in your comment. In general, the OCC will publish comments on

www.reginfo.gov without change, including any business or personal information provided, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this information collection beginning on the date of publication of the second notice for this collection [1] by any of the following methods:

• *Viewing Comments Electronically:* Go to *www.reginfo.gov.* Click on the ''Information Collection Review'' tab. Underneath the ''Currently under Review'' section heading, from the drop-down menu, select ''Department of Treasury'' and then click ''submit.'' This information collection can be located by searching by OMB control number ''Regulation C—Home Mortgage Disclosure.'' Upon finding the appropriate information collection, click on the related ''ICR Reference Number.'' On the next screen, select ''View Supporting Statement and Other Documents'' and then click on the link to any comment listed at the bottom of the screen.

• For assistance in navigating *www.reginfo.gov,* please contact the Regulatory Information Service Center at (202) 482–7340.

• *Viewing Comments Personally:* You may personally inspect comments at the OCC, 400 7th Street SW, Washington, DC. 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: Shaquita Merritt, OCC Clearance Officer, (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: Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the OMB for each collection of information that they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of title 44 requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the OCC is publishing this notice.

Title: Regulation C—Home Mortgage Disclosure Act.

OMB Control Nos.: 1557–NEW.[2]

Type of Review: Regular review.

Description: Regulation C,[3] which implements the Home Mortgage Disclosure Act [4] (HMDA) enacted in 1975, requires certain depository and non-depository institutions that make certain mortgage loans to collect, report, and disclose data about originations and purchases of mortgage loans, as well as loan applications that do not result in originations. HMDA generates loan data that can be used to: (1) Help determine whether financial institutions are serving the housing needs of their communities; (2) assist public officials in distributing public-sector investments so as to attract private investment to areas where it is needed; and (3) assist in identifying possible discriminatory lending patterns and enforcing anti-discrimination statutes.

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 [5] (the Dodd-Frank Act) transferred HMDA and its rulemaking authority from the Board of Governors of the Federal Reserve System (Board) to the Consumer Financial Protection Bureau (CFPB), and transferred supervisory and enforcement authority for HMDA for depository institutions over $10 billion in consolidated assets from the Board, Federal Deposit Insurance Corporation, OCC, and National Credit Union Administration to the CFPB.

The CFPB published a final rule on October 28, 2015, that expanded the data collected and reported under HMDA, as implemented by Regulation C, and published a final rule on September 13, 2017, with additional corrections and clarifications (final rules). The final rules also modified the types of lenders and loans covered under Regulation C. First, for data collected in 2017, and reported in 2018, the rule simply reduces the number of institutions covered under Regulation C because only depositories originating more than 25 closed-end loans must report the data. Then, starting January 1, 2018, an institution was required to begin collecting expanded data under HMDA if it either originates 25 or more closed-end mortgage loans or 500 or more open-end lines of credit secured by a dwelling in each of the two preceding years, in addition to meeting other criteria. These institutions will begin reporting the expanded HMDA data in 2019, except to the extent that a later 2018 rule (discussed below) provides a partial exemption from reporting certain data. Starting in 2020, an institution will collect data on open-end lines of credit if it originates more than 100 open-end lines of credit secured by a dwelling in each of the two preceding years (and report that open-end lines of credit data beginning in 2021). An institution also will collect and report covered loans and applications quarterly if it received a total of at least 60,000 covered loans and applications in the preceding calendar year. An institution must report a covered loan if it has met the loan origination threshold for that loan category (open-end or closed-end); an institution that is not required to report data may voluntarily do so.

In addition, the types of loans covered under Regulation C changed under the final rules beginning in 2018. Covered institutions are required to collect and report any mortgage loan secured by a dwelling, including open-end lines of credit, regardless of the loan's purpose. Dwelling-secured loans that are made principally for a commercial or business purpose, as well as agricultural–purpose loans and other specified loans are excluded.

On September 7, 2018, the CFPB issued an interpretive and procedural rule [6] to implement section 104(a) of the Economic Growth, Regulatory Relief, and Consumer Protection Act [7] (EGRRCPA). Section 104(a) amended certain provisions of the Home Mortgage Disclosure Act (HMDA) by adding partial exemptions from HMDA's requirements for certain insured depository institutions and insured credit unions. Insured depository institutions and insured credit unions covered by a partial exemption have the

[1] Following the close of the 60-day comment period for this notice, the OCC will publish a notice for 30 days of comment for this collection.

[2] Regulation C is currently covered by OMB Control No. 1557–0176, which also covers other consumer regulations. The OCC is requesting a new control number for Regulation C only.

[3] 12 CFR part 1003.

[4] 12 U.S.C. 2801–2811.

[5] Public Law 111–203, July 21, 2010.

[6] 83 FR 45325.

[7] Public Law 115–174, 132 Stat. 1296 (2018).

option of reporting exempt data fields as long as they report all data fields within any exempt data point for which they report data.

Section 104(a) of the EGRRCPA amends HMDA section 304(i), which provides that the requirements of HMDA section 304(b)(5) and (6) shall not apply with respect to closed-end mortgage loans of an insured depository institution or insured credit union if it originated fewer than 500 closed-end mortgage loans in each of the two preceding calendar years. Sections 304(b)(5) and (6) do not apply with respect to open-end lines of credit of an insured depository institution or insured credit union if it originated fewer than 500 open-end lines of credit in each of the two preceding calendar years. An insured depository institution still must comply with HMDA section 304(b)(5) and (6) if it has received a rating of ''needs to improve record of meeting community credit needs'' during each of its two most recent examinations or a rating of ''substantial noncompliance in meeting community credit needs'' on its most recent Community Reinvestment Act examination.

We have adjusted our burden estimates based on section 104(a). We are soliciting comment on the questions set forth below in light of the section 104(a) changes.

Affected Public: Businesses or other for-profit.

Burden Estimates:

2018:

Estimated Number of Respondents: 683.

Estimated Annual Burden: 723,233 hours.

2019:

Estimated Number of Respondents: 683.

Estimated Annual Burden: 635,938 hours.

Frequency of Response: On occasion.

Comments: Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collections of information are necessary for the proper performance of the functions of the OCC, including whether the information has practical utility; (b) The accuracy of the OCC's estimates of the information collection burden; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; (d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: February 8, 2019.

Theodore J. Dowd,

Deputy Chief Counsel, Office of the Comptroller of the Currency.

[FR Doc. 2019–02328 Filed 2–13–19; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

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

ACTION: Joint notice and request for comment.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA), the OCC, the Board, and the FDIC (the agencies) may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. On September 28, 2018, the agencies, under the auspices of the Federal Financial Institutions Examination Council (FFIEC), requested public comment for 60 days on a proposal to revise and extend the Consolidated Reports of Condition and Income for a Bank with Domestic and Foreign Offices (FFIEC 031), the Consolidated Reports of Condition and Income for a Bank with Domestic Offices Only (FFIEC 041), and the Consolidated Reports of Condition and Income for a Bank with Domestic Offices Only and Total Assets Less Than $1 Billion (FFIEC 051), which are currently approved collections of information. The Consolidated Reports of Condition and Income are commonly referred to as Call Reports. In addition, the FFIEC requested public comment for 60 days on a proposal to revise and extend the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002) and the Report of Assets and Liabilities of a Non-U.S. Branch that is Managed or Controlled by a U.S. Branch or Agency of a Foreign (Non-U.S.) Bank (FFIEC 002S), which are currently approved collections of information. The Board published this proposal on behalf of the agencies. Also, the agencies requested public comment for 60 days on proposals to revise and extend the Foreign Branch Report of Condition (FFIEC 030), the Abbreviated Foreign Branch Report of Condition (FFIEC 030S), and the Regulatory Capital Reporting for Institutions Subject to the Advanced Capital Adequacy Framework (FFIEC 101), which are currently approved collections of information.

The comment period for the September 2018 notice ended on November 27, 2018. As described in the **SUPPLEMENTARY INFORMATION** section, after considering the comments received on the proposals, the FFIEC and agencies will proceed with the proposed reporting revisions to and extensions of the FFIEC 031, FFIEC 041, FFIEC 051, FFIEC 002, FFIEC 002S, FFIEC 030, FFIEC 030S, and FFIEC 101, as originally proposed, with some modification to the FFIEC 031 and FFIEC 041. These proposed revisions generally address the revised accounting for credit losses under the Financial Accounting Standards Board's (FASB) Accounting Standards Update (ASU) No. 2016–13, ''Financial Instruments—Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments'' (ASU 2016–13). This proposal also includes regulatory capital reporting changes related to implementing the agencies' recent final rule on the implementation and capital transition for the current expected credit losses methodology (CECL).

In addition, this notice includes other revisions to the Call Reports and the FFIEC 101 resulting from two sections of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA), effective upon enactment on May 24, 2018, that affect the information reported in these reports and for which the agencies submitted emergency review requests to OMB that OMB has approved.

The proposed revisions related to ASU 2016–13 would begin to take effect March 31, 2019, for reports with quarterly report dates and December 31, 2019, for reports with an annual report date, with later effective dates for certain respondents.

In addition, the agencies are giving notice they are sending the collections to OMB for review.

DATES: Comments must be submitted on or before March 18, 2019.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments, which should refer to the ''CECL and EGRRCPA Reporting Revisions,'' will be shared among the agencies.

OCC: Commenters are encouraged to submit comments by email, if possible. You may submit comments by any of the following methods:

- *Email: prainfo@occ.treas.gov.*
- *Mail:* Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: ''CECL and EGRPRA Reporting Revisions,'' 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Fax:* (571) 465–4326.

Instructions: You must include ''OCC'' as the agency name and ''CECL and EGRPRA Reporting Revisions,'' in your comment. In general, the OCC will publish your comment on *www.reginfo.gov* 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.

Additionally, please send a copy of your comments by mail to: OCC Desk Officer, U.S. Office of Management and Budget, Attn: 1557–0081, 1557–0099, 1557–0239, 725 17th Street NW, #10235, Washington, DC 20503 or by email to *oira_submission@omb.eop.gov.*

You may review comments and other related materials that pertain to this information collection following the close of the 30-Day comment period for this notice by any of the following methods:

- *Viewing Comments Electronically:* Go to *www.reginfo.gov.* Click on the ''Information Collection Review'' tab. Underneath the ''Currently under Review'' section heading, from the drop-down menu, select ''Department of Treasury'' and then click ''submit.'' This information collection can be located by searching by OMB control numbers 1557–0081, 1557–0099, and 1557–0239. Upon finding the appropriate information collection, click on the related ''ICR Reference Number.'' On the next screen, select ''View Supporting Statement and Other Documents'' and then click on the link to any comment listed at the bottom of the screen.
- For assistance in navigating *www.reginfo.gov,* please contact the Regulatory Information Service Center at (202) 482–7340.
- *Viewing Comments Personally:* You may personally inspect comments at the OCC, 400 7th Street SW, Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hearing impaired, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect comments.

Board: You may submit comments, which should refer to ''CECL and EGRRCPA Reporting Revisions,'' by any of the following methods:

- *Agency Website: http://www.federalreserve.gov.* Follow the instructions for submitting comments at: *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Email: regs.comments@federalreserve.gov.* Include ''CECL and EGRRCPA Reporting Revisions'' 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 *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* 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.

FDIC: You may submit comments, which should refer to ''CECL and EGRRCPA Reporting Revisions,'' by any of the following methods:

- *Agency Website: https://www.fdic.gov/regulations/laws/federal/.* Follow the instructions for submitting comments on the FDIC's website.
- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: comments@FDIC.gov.* Include ''CECL and EGRRCPA Reporting Revisions'' in the subject line of the message.
- *Mail:* Manuel E. Cabeza, Counsel, Attn: Comments, Room MB–3007, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429.
- *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.

Public Inspection: All comments received will be posted without change to *https://www.fdic.gov/regulations/laws/federal/* including any personal information provided. Paper copies of public comments may be requested from the FDIC Public Information Center by telephone at (877) 275–3342 or (703) 562–2200.

Additionally, commenters may send a copy of their comments to the OMB desk officer for the agencies by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503; by fax to (202) 395–6974; or by email to *oira_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: For further information about the proposed revisions to the information collections discussed in this notice, please contact any of the agency staff whose names appear below. In addition, copies of the reporting forms for the reports within the scope of this notice can be obtained at the FFIEC's website (*https://www.ffiec.gov/ffiec_report_forms.htm*).

OCC: Kevin Korzeniewski, Counsel, (202) 649–5490, or for persons who are deaf or hearing impaired, TTY, (202) 649–5597, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219.

Board: Nuha Elmaghrabi, Federal Reserve Board Clearance Officer, (202) 452–3884, Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call (202) 263–4869.

FDIC: Manuel E. Cabeza, Counsel, (202) 898–3767, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Background

A. ASU 2016–13, ''Financial Instruments—Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments''

In June 2016, the FASB issued ASU 2016–13, which introduced CECL for estimating allowances for credit losses and added Topic 326, Credit Losses, to the Accounting Standards Codification (ASC). The new credit losses standard

changes several aspects of existing U.S. generally accepted accounting principles (U.S. GAAP) as follows:

• Introduction of a New Credit Loss Methodology

The new accounting standard developed by the FASB has been designed to replace the existing incurred loss methodology in U.S. GAAP. Under CECL, the allowance for credit losses is an estimate of the expected credit losses on financial assets measured at amortized cost, which is measured using relevant information about past events, including historical credit loss experience on financial assets with similar risk characteristics, current conditions, and reasonable and supportable forecasts that affect the collectability of the remaining cash flows over the contractual term of the financial assets. In concept, an allowance will be created upon the origination or acquisition of a financial asset measured at amortized cost. At subsequent reporting dates, the allowance will be reassessed for a level that is appropriate as determined in accordance with CECL. The allowance for credit losses under CECL is a valuation account, measured as the difference between the financial assets' amortized cost basis and the amount expected to be collected on the financial assets, *i.e.,* lifetime expected credit losses.

• Reduction in the Number of Credit Impairment Models

Impairment measurement under existing U.S. GAAP has often been considered complex because it encompasses five credit impairment models for different financial assets.[1] In contrast, CECL introduces a single measurement objective to be applied to all financial assets measured at amortized cost, including loans held-for-investment (HFI) and held-to-maturity (HTM) debt securities. CECL does not, however, specify a single method for measuring expected credit losses; rather, it allows any reasonable approach, as long as the estimate of expected credit losses achieves the objective of the FASB's new accounting standard. Under the existing incurred loss methodology, institutions use various methods, including historical loss rate methods, roll-rate methods, and discounted cash flow methods, to estimate credit losses. CECL allows the continued use of these methods; however, certain changes to these methods will need to be made in order to estimate lifetime expected credit losses.

• Purchased Credit-Deteriorated (PCD) Financial Assets

CECL introduces the concept of PCD financial assets, which replaces purchased credit-impaired (PCI) assets under existing U.S. GAAP. The differences in the PCD criteria compared to the existing PCI criteria will result in more purchased loans HFI, HTM debt securities, and available-for-sale (AFS) debt securities being accounted for as PCD financial assets. In contrast to the existing accounting for PCI assets, the new standard requires the estimate of expected credit losses embedded in the purchase price of PCD assets to be estimated and separately recognized as an allowance as of the date of acquisition. This is accomplished by grossing up the purchase price by the amount of expected credit losses at acquisition, rather than being reported as a credit loss expense. As a result, as of the acquisition date, the amortized cost basis of a PCD financial asset is equal to the purchase price of the asset plus the allowance for credit losses, rather than equal to the purchase price as is currently recorded for PCI loans.

• AFS Debt Securities

The new accounting standard also modifies the existing accounting practices for impairment on AFS debt securities. Under this new standard, institutions will recognize a credit loss on an AFS debt security through an allowance for credit losses, rather than a direct write-down as is required by current U.S. GAAP. The recognized credit loss is limited to the amount by which the amortized cost of the security exceeds fair value. A write-down of an AFS debt security's amortized cost basis to fair value, with any incremental impairment reported in earnings, would be required only if the fair value of the AFS debt security is less than its amortized cost basis and either (1) the institution intends to sell the debt security, or (2) it is more likely than not that the institution will be required to sell the security before recovery of its amortized cost basis.

Although the measurement of credit loss allowances is changing under CECL, the FASB's new accounting standard does not address when a financial asset should be placed in nonaccrual status. Therefore, institutions should continue to apply the agencies' nonaccrual policies that are currently in place.[2] In addition, the FASB retained the existing write-off guidance in U.S. GAAP, which requires an institution to write off a financial asset in the period the asset is deemed uncollectible.

Institutions[3] must apply ASU 2016–13 in their Call Report, FFIEC 002,[4] FFIEC 002S, FFIEC 030, FFIEC 030S, and FFIEC 101 submissions in accordance with the effective dates set forth in the ASU, if an institution is required to file such form. For institutions that are public business entities (PBE) and also are Securities and Exchange Commission (SEC) filers, as both terms are defined in U.S. GAAP, the new credit losses standard is effective for fiscal years beginning after December 15, 2019, including interim periods within those fiscal years. Thus, for an SEC filer that has a calendar year fiscal year, the standard is effective January 1, 2020, and the institution must first apply the new credit losses standard in its Call Report, FFIEC 002,[5] FFIEC 002S, FFIEC 030, and FFIEC 101 for the quarter ended March 31, 2020 (and in its FFIEC 030S for December 31, 2020), if the institution is required to file these forms.

For a PBE that is not an SEC filer, the credit losses standard is effective for fiscal years beginning after December 15, 2020, including interim periods within those fiscal years. Thus, for a PBE that is not an SEC filer and has a calendar year fiscal year, the standard is effective January 1, 2021, and the institution must first apply the new credit losses standard in its Call Report, FFIEC 002,[6] FFIEC 002S, FFIEC 030, and FFIEC 101 for the quarter ended March 31, 2021 (and in its FFIEC 030S for December 31, 2021), if the institution is required to file these forms.

[1] Current U.S. GAAP includes five different credit impairment models for instruments within the scope of CECL: ASC Subtopic 310–10, Receivables-Overall; ASC Subtopic 450–20, Contingencies-Loss Contingencies; ASC Subtopic 310–30, Receivables-Loans and Debt Securities Acquired with Deteriorated Credit Quality; ASC Subtopic 320–10, Investments-Debt and Equity Securities—Overall; and ASC Subtopic 325–40, Investments-Other-Beneficial Interests in Securitized Financial Assets.

[2] For further information, refer to the Glossary entry for ''Nonaccrual Status'' in the FFIEC 031 and FFIEC 041 Call Report instruction book, the FFIEC 051 Call Report instruction book, or the FFIEC 002 instruction book.

[3] Institutions include banks, savings associations, holding companies, U.S. branches and agencies of foreign banks, and foreign branches of U.S. banks and U.S. savings associations.

[4] As stated in the instructions for the FFIEC 002, U.S. branches and agencies of foreign banks may choose to, but are not required to, maintain an allowance for loan losses on an office level. Similarly, under this proposal, U.S. branches and agencies of foreign banks that have adopted ASU 2016–13 may choose to, but are not required to, maintain allowances for credit losses on loans and other financial assets measured at amortized cost (such as HTM debt securities), net investments in leases, and off-balance sheet credit exposures (not accounted for as insurance) on an office level.

[5] See footnote 4.

[6] See footnote 4.

For an institution that is not a PBE, the credit losses standard is effective for fiscal years beginning after December 15, 2021, including interim periods within those fiscal years.[7] Thus, for an institution that is not a PBE and has a calendar year fiscal year, the standard is effective January 1, 2022, and the institution must first apply the new credit losses standard in its Call Report, FFIEC 002,[8] FFIEC 002S, FFIEC 030, FFIEC 030S, and FFIEC 101 for the quarter ended March 31, 2022 (and in its FFIEC 030S for December 31, 2022) if the institution is required to file these forms.

For regulatory reporting purposes, early application of the new credit losses standard is permitted for all institutions for fiscal years beginning after December 15, 2018, including interim periods within those fiscal years.

The following table provides a summary of the effective dates for ASU 2016–13.

EFFECTIVE DATES FOR ASU 2016–13

	U.S. GAAP effective date	Regulatory report effective date *
PBEs That Are SEC Filers	Fiscal years beginning after 12/15/2019, including interim periods within those fiscal years.	3/31/2020.
Other PBEs (Non-SEC Filers)	Fiscal years beginning after 12/15/2020, including interim periods within those fiscal years.	3/31/2021.
Non-PBEs	Fiscal years beginning after 12/15/2021, including interim periods within those fiscal years.[9]	3/31/2022.[10]
Early Application	Early adoption permitted for fiscal years beginning after 12/15/2018, including interim periods within those fiscal years.	First 3/31 after the 1/1 effective date of early adoption of the ASU.

* For institutions with calendar year fiscal year-ends and reports with quarterly report dates.

For additional information on key elements of the new accounting standard and initial supervisory views with respect to measurement methods, use of vendors, portfolio segmentation, data needs, qualitative adjustments, and allowance processes, refer to the agencies' Joint Statement on the New Accounting Standard on Financial Instruments—Credit Losses issued on June 17, 2016, and Frequently Asked Questions on the New Accounting Standard on Financial Instruments—Credit Losses (CECL FAQs), which were last updated on September 6, 2017.[11]

B. EGRRCPA

On May 24, 2018, EGRRCPA amended various statutes administered by the agencies and affected regulations issued by the agencies.[12] Two of the amendments made by EGRRCPA, as described below, took effect on the day of EGRRCPA's enactment and impact institutions' regulatory reports. In response to emergency review requests, the agencies received approval from OMB to revise the reporting of information in the Call Reports on certain high volatility commercial real estate (HVCRE) exposures and reciprocal deposits and in the FFIEC 101 report on certain HVCRE exposures for the June 30, 2018, report date. As a result of OMB's emergency approval of revisions to the information collections affected by the above statutory changes, the expiration date of these collections has been revised to February 28, 2019. The agencies are now undertaking the regular PRA process for revising and extending these information collections for three years as described in this notice.

• HVCRE Exposures

Section 214 of EGRRCPA adds a new Section 51 to the Federal Deposit Insurance Act (FDI Act) governing the risk-based capital requirements for certain acquisition, development, or construction (ADC) loans. EGRRCPA provides that, effective upon enactment, the agencies may only require a depository institution to assign a heightened risk weight to an HVCRE exposure if such exposure is an ''HVCRE ADC Loan,'' as defined in Section 214 of EGRRCPA. Accordingly, a depository institution is permitted to use the definition of HVCRE ADC Loan in place of the existing definition of HVCRE loan when reporting HVCRE exposures held for sale, held for investment, and held for trading on Schedule RC–R, Regulatory Capital, Part II, Risk-Weighted Assets, in the Call Reports, as well as on Schedule B and Schedule G in the FFIEC 101 for institutions required to file that form.

• Reciprocal Deposits

Section 29 of the FDI Act (12 U.S.C. 1831f), as amended by Section 202 of EGRRCPA, excepts a capped amount of reciprocal deposits from treatment as brokered deposits for qualifying institutions, effective upon enactment. The current Call Report instructions, consistent with the law prior to the enactment of EGRRCPA, treat all reciprocal deposits as brokered deposits. When reporting in the Call Report, institutions should apply the newly defined terms and other provisions of Section 202 to determine whether they and their reciprocal deposits are eligible for the statutory exclusion and report as brokered deposits in Schedule RC–E, and brokered reciprocal deposits in Schedule RC–O, only those reciprocal deposits that are considered brokered reciprocal deposits under the new law.

II. Affected Reports and Specific Revisions

A. Call Reports

The agencies propose to extend for three years, with revision, the FFIEC 031, FFIEC 041, and FFIEC 051 Call Reports.

Report Title: Consolidated Reports of Condition and Income (Call Report).

Form Numbers: FFIEC 031 (for banks and savings associations with domestic

[7] Subsequent to the publishing of the initial 60-day **Federal Register** notice for this proposal, the FASB amended the effective date to the periods indicated for entities that are not PBEs (non-PBEs) through an ASU issued November 15, 2018, ASU No. 2018–19, Codification Improvements to Topic 326: Financial Instruments—Credit Losses. The effective date for these entities reflected in this notice has been updated as appropriate.

[8] See footnote 4.

[9] See footnote 7.

[10] See footnote 7.

[11] The CECL FAQs and a related link to the joint statement can be found on the following agency websites: Board: *https://www.federalreserve.gov/supervisionreg/srletters/sr1708a1.pdf;* FDIC: *https://www.fdic.gov/news/news/financial/2017/fil17041a.pdf;* OCC: *https://www.occ.gov/topics/bank-operations/accounting/cecl/cecl-faqs.html.*

[12] Public Law 115–174, 132 Stat. 1296 (2018).

and foreign offices), FFIEC 041 (for banks and savings associations with domestic offices only),[13] and FFIEC 051 (for banks and savings associations with domestic offices only and total assets less than $1 billion).

Frequency of Response: Quarterly.

Affected Public: Business or other for-profit.

OCC

OMB Control No.: 1557–0081.

Estimated Number of Respondents: 1,207 national banks and federal savings associations.

Estimated Average Burden per Response: 45.76 burden hours per quarter to file.

Estimated Total Annual Burden: 220,929 burden hours to file.

Board

OMB Control No.: 7100–0036.

Estimated Number of Respondents: 796 state member banks.

Estimated Average Burden per Response: 50.11 burden hours per quarter to file.

Estimated Total Annual Burden: 159,550 burden hours to file.

FDIC

OMB Control No.: 3064–0052.

Estimated Number of Respondents: 3,523 insured state nonmember banks and state savings associations.

Estimated Average Burden per Response: 44.65 burden hours per quarter to file.

Estimated Total Annual Burden: 629,208 burden hours to file.

The estimated average burden hours collectively reflect the estimates for the FFIEC 031, the FFIEC 041, and the FFIEC 051 reports. When the estimates are calculated by type of report across the agencies, the estimated average burden hours per quarter are 95.47 (FFIEC 031), 55.71 (FFIEC 041), and 39.77 (FFIEC 051). The estimated burden per response for the quarterly filings of the Call Report is an average that varies by agency because of differences in the composition of the banks and savings associations under each agency's supervision (*e.g.,* size distribution of such institutions, types of activities in which they are engaged, and existence of foreign offices).

Type of Review: Extension and revision of currently approved collections.

General Description of Reports

The Call Report information collections are mandatory: 12 U.S.C. 161 (for national banks), 12 U.S.C. 324 (for state member banks), 12 U.S.C. 1817 (for insured state nonmember commercial and savings banks), and 12 U.S.C. 1464 (for federal and state savings associations). At present, except for selected data items and text, these information collections are not given confidential treatment.

Abstract

Banks and savings associations submit Call Report data to the agencies each quarter for the agencies' use in monitoring the condition, performance, and risk profile of individual institutions and the industry as a whole. Call Report data serve a regulatory or public policy purpose by assisting the agencies in fulfilling their shared missions of ensuring the safety and soundness of financial institutions and the financial system and protecting consumer financial rights, as well as agency-specific missions affecting national and state-chartered institutions, such as conducting monetary policy, ensuring financial stability, and administering federal deposit insurance. Call Reports are the source of the most current statistical data available for identifying areas of focus for on-site and off-site examinations. Among other purposes, the agencies use Call Report data in evaluating institutions' corporate applications, including, in particular, interstate merger and acquisition applications for which the agencies are required by law to determine whether the resulting institution would control more than 10 percent of the total amount of deposits of insured depository institutions in the United States. Call Report data also are used to calculate institutions' deposit insurance and Financing Corporation assessments and national banks' and federal savings associations' semiannual assessment fees.

B. FFIEC 002 and 002S

The Board proposes to extend for three years, with revision, on behalf of the agencies the FFIEC 002 and FFIEC 002S reports.

Report Titles: Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks; Report of Assets and Liabilities of a Non-U.S. Branch that is Managed or Controlled by a U.S. Branch or Agency of a Foreign (Non-U.S.) Bank.

Form Numbers: FFIEC 002; FFIEC 002S.

OMB control number: 7100–0032.

Frequency of Response: Quarterly.

Affected Public: Business or other for-profit.

Respondents: All state-chartered or federally-licensed U.S. branches and agencies of foreign banking organizations, and all non-U.S. branches managed or controlled by a U.S. branch or agency of a foreign banking organization.

Estimated Number of Respondents: FFIEC 002—209; FFIEC 002S—38.

Estimated Average Burden per Response: FFIEC 002—23.87 hours; FFIEC 002S—6.0 hours.

Estimated Total Annual Burden: FFEIC 002—19,955 hours; FFIEC 002S—912 hours.

Type of Review: Extension and revision of currently approved collections.

General Description of Reports

These information collections are mandatory (12 U.S.C. 3105(c)(2), 1817(a)(1) and (3), and 3102(b)). Except for select sensitive items, the FFIEC 002 is not given confidential treatment; the FFIEC 002S is given confidential treatment (5 U.S.C. 552(b)(4) and (8)).

Abstract

On a quarterly basis, all U.S. branches and agencies of foreign banks are required to file the FFIEC 002, which is a detailed report of condition with a variety of supporting schedules. This information is used to fulfill the supervisory and regulatory requirements of the International Banking Act of 1978. The data are also used to augment the bank credit, loan, and deposit information needed for monetary policy and other public policy purposes. The FFIEC 002S is a supplement to the FFIEC 002 that collects information on assets and liabilities of any non-U.S. branch that is managed or controlled by a U.S. branch or agency of the foreign bank. A non-U.S. branch is managed or controlled by a U.S. branch or agency if a majority of the responsibility for business decisions, including but not limited to decisions with regard to lending or asset management or funding or liability management, or the responsibility for recordkeeping with respect to assets or liabilities for that foreign branch, resides at the U.S. branch or agency. A separate FFIEC 002S must be completed for each managed or controlled non-U.S. branch. The FFIEC 002S must be filed quarterly along with the U.S. branch or agency's FFIEC 002. The data from both reports are used for (1) monitoring deposit and credit transactions of U.S. residents; (2) monitoring the impact of policy changes; (3) analyzing structural issues concerning foreign bank activity in U.S. markets; (4) understanding flows of banking funds and indebtedness of

[13] Banks and savings associations with domestic offices only and total consolidated assets of $100 billion or more file the FFIEC 031 report rather than the FFIEC 041 report.

developing countries in connection with data collected by the International Monetary Fund and the Bank for International Settlements that are used in economic analysis; and (5) assisting in the supervision of U.S. offices of foreign banks. The Federal Reserve System collects and processes these reports on behalf of all three agencies.

C. FFIEC 030 and 030S

The agencies propose to extend for three years, with revision, the FFIEC 030 and FFIEC 030S reports.

Report Title: Foreign Branch Report of Condition.

Form Numbers: FFIEC 030 and FFIEC 030S.

Frequency of Response: Annually, and quarterly for significant branches.

Affected Public: Business or other for profit.

OCC

OMB Number: 1557–0099.

Estimated Number of Respondents: 199 annual branch respondents (FFIEC 030); 57 quarterly branch respondents (FFIEC 030); 30 annual branch respondents (FFIEC 030S).

Estimated Average Time per Response: 3.4 burden hours (FFIEC 030); 0.5 burden hours (FFIEC 030S).

Estimated Total Annual Burden: 1,467 burden hours.

Board

OMB Number: 7100–0071.

Estimated Number of Respondents: 14 annual branch respondents (FFIEC 030); 24 quarterly branch respondents (FFIEC 030); 11 annual branch respondents (FFIEC 030S).

Estimated Average Time per Response: 3.4 burden hours (FFIEC 030); 0.5 burden hours (FFIEC 030S).

Estimated Total Annual Burden: 380 burden hours.

FDIC

OMB Number: 3064–0011.

Estimated Number of Respondents: 8 annual branch respondents (FFIEC 030); 1 quarterly branch respondent (FFIEC 030); 8 annual branch respondents (FFIEC 030S).

Estimated Average Time per Response: 3.4 burden hours (FFIEC 030); 0.5 burden hours (FFIEC 030S).

Estimated Total Annual Burden: 45 burden hours.

Type of Review: Extension and revision of currently approved collections.

General Description of Reports

This information collection is mandatory: 12 U.S.C. 602 (Board); 12 U.S.C. 161 and 602 (OCC); and 12 U.S.C. 1828 (FDIC). This information collection is given confidential treatment under 5 U.S.C. 552(b)(4) and (8).

Abstract

The FFIEC 030 collects asset and liability information for foreign branches of insured U.S. banks and insured U.S. savings associations (U.S. depository institutions) and is required for regulatory and supervisory purposes. The information is used to analyze the foreign operations of U.S. institutions. All foreign branches of U.S. institutions regardless of charter type file this report as provided in the instructions to the FFIEC 030 and FFIEC 030S.

A U.S. depository institution generally must file a separate report for each foreign branch, but in some cases may consolidate filing for multiple foreign branches in the same country, as described below. A branch with either total assets of at least $2 billion or commitments to purchase foreign currencies and U.S. dollar exchange of at least $5 billion as of the end of a calendar quarter is considered a ''significant branch'' and an FFIEC 030 report is required to be filed quarterly. A U.S. depository institution with a foreign branch having total assets in excess of $250 million that does not meet either of the criteria to file quarterly must file the entire FFIEC 030 report for this foreign branch on an annual basis as of December 31.

A U.S. depository institution with a foreign branch having total assets of $50 million or more, but less than or equal to $250 million that does not meet the criteria to file the FFIEC 030 report must file the FFIEC 030S report for this foreign branch on an annual basis as of December 31. A U.S. depository institution with a foreign branch having total assets of less than $50 million is exempt from filing the FFIEC 030 and 030S reports.

D. FFIEC 101

The agencies propose to extend for three years, with revision, the FFIEC 101 report.

Report Title: Risk-Based Capital Reporting for Institutions Subject to the Advanced Capital Adequacy Framework.

Form Number: FFIEC 101.

Frequency of Response: Quarterly.

Affected Public: Business or other for-profit.

OCC

OMB Control No.: 1557–0239.

Estimated Number of Respondents: 20 national banks and federal savings associations.

Estimated Time per Response: 674 burden hours per quarter to file.

Estimated Total Annual Burden: 53,920 burden hours to file.

Board

OMB Control No.: 7100–0319.

Estimated Number of Respondents: 6 state member banks; 16 bank holding companies and savings and loan holding companies; and 6 intermediate holding companies.

Estimated Time per Response: 674 burden hours per quarter for state member banks to file, 677 burden hours per quarter for bank holding companies and savings and loan holding companies to file; and 3 burden hours per quarter for intermediate holding companies to file.

Estimated Total Annual Burden: 16,176 burden hours for state member banks to file; 43,328 burden hours for bank holding companies and savings and loan holding companies to file; and 72 burden hours for intermediate holding companies to file.

FDIC

OMB Control No.: 3064–0159.

Estimated Number of Respondents: 2 insured state nonmember banks and state savings associations.

Estimated Time per Response: 674 burden hours per quarter to file.

Estimated Total Annual Burden: 5,392 burden hours to file.

Type of Review: Extension and revision of currently approved collections.

General Description of Reports

Each advanced approaches institution [14] is required to report quarterly regulatory capital data on the FFIEC 101. The FFIEC 101 information collection is mandatory for advanced approaches institutions: 12 U.S.C. 161 (national banks), 12 U.S.C. 324 (state member banks), 12 U.S.C. 1844(c) (bank holding companies), 12 U.S.C. 1467a(b) (savings and loan holding companies), 12 U.S.C. 1817 (insured state nonmember commercial and savings banks), 12 U.S.C. 1464 (savings associations), and 12 U.S.C. 1844(c), 3106, and 3108 (intermediate holding companies). Certain data items in this information collection are given confidential treatment under 5 U.S.C. 552(b)(4) and (8).

Abstract

The agencies use data reported in the FFIEC 101 to assess and monitor the levels and components of each reporting

[14] See 12 CFR 3.100(b) (OCC); 12 CFR 217.100(b) (Board); 12 CFR 324.100(b) (FDIC).

entity's capital requirements and the adequacy of the entity's capital under the Advanced Capital Adequacy Framework; [15] to evaluate the impact of the Advanced Capital Adequacy Framework on individual reporting entities and on an industry-wide basis and its competitive implications; and to supplement on-site examination processes. The reporting schedules also assist advanced approaches institutions in understanding expectations relating to the system development necessary for implementation and validation of the Advanced Capital Adequacy Framework. Submitted data that are released publicly will also provide other interested parties with information about advanced approaches institutions' regulatory capital.

Current Actions

I. Introduction

In response to the new credit losses standard, key elements of which were outlined above in Section A of ''Supplementary Information, I. Background,'' the agencies reviewed the existing FFIEC reports to determine which reports may be affected by ASU 2016–13. As a result, on September 28, 2018, the agencies requested comment for 60 days on a proposal to revise and extend the following FFIEC reports: (1) Call Reports (FFIEC 031, FFIEC 041, and FFIEC 051), (2) FFIEC 002 and FFIEC 002S, (3) FFIEC 030 and FFIEC 030S, and (4) FFIEC 101.[16]

The agencies also reviewed the existing FFIEC reports to determine which reports may be affected by EGRRCPA. As a result, additional revisions were proposed for the Call Reports (FFIEC 031, FFIEC 041, and FFIEC 051) and the FFIEC 101.

The comment period for the September 2018 notice ended on November 27, 2018. The agencies received comments on the proposals covered in the notice from two entities, a bankers' association and a bank. The commenters recommended clarifications to the language used in the notice and associated reporting instructions, as well as clarifying edits to the proposed revised reporting forms.

The agencies also reevaluated the proposed portfolio categories for which disaggregated allowance information would begin to be reported by institutions after adoption of ASU 2016–13 for held-to-maturity (HTM) debt securities on Schedule RI–C, Part II, on the FFIEC 031 and FFIEC 041. The agencies determined that separate reporting of allowances on HTM mortgage-backed securities issued or guaranteed by U.S. government agencies or sponsored agencies and other HTM mortgage-backed securities, which had been proposed in the September 2018 notice, is not needed because, at present, the former category of mortgage-backed securities would likely have zero expected credit losses. As a result, the agencies propose to combine these portfolio categories and collect only one data item, rather than two data items, for the total allowances on an institution's HTM mortgage-backed securities.

In addition, in December 2018, the agencies approved a final rule amending their capital rule to address CECL.[17] The final rule included revised terminology for the allowance balance eligible for inclusion in regulatory capital.[18] The agencies plan to make a conforming terminology revision for the reporting of regulatory capital on Schedule RC–R.

After considering these comments, the agencies will proceed with the revisions proposed in the September 2018 notice to the FFIEC 031, FFIEC 041, FFIEC 051, FFIEC 002, FFIEC 002S, FFIEC 030, FFIEC 030S, and FFIEC 101, as originally proposed, with some modification to the FFIEC 031 and FFIEC 041, as noted above. The agencies will incorporate appropriate clarifying edits suggested by commenters in the updated instruction books and report forms. The agencies are now submitting requests to OMB for review and approval of the extension, with revisions, of the following FFIEC reports: (1) Call Reports (FFIEC 031, FFIEC 041, and FFIEC 051), (2) FFIEC 030 and FFIEC 030S, and (3) FFIEC 101. The Board is now submitting the FFIEC 002 and the FFIEC 002S to OMB for review and approval of the extension, with revisions, on behalf of the agencies.

IV. Timing

Subject to OMB approval, the proposed revisions related to ASU 2016–13 would begin to take effect March 31, 2019, for reports with quarterly report dates, and December 31, 2019, for reports with an annual report date, with later effective dates for certain respondents. The specific wording of the captions for the new or revised Call Report data items discussed in the September 2018 notice and the numbering of these data items, as identified in that notice, are subject to change.

This notice also includes other revisions to the Call Reports and the FFIEC 101 resulting from two sections of EGRRCPA, effective upon enactment on May 24, 2018, that affect the information reported in these reports and for which the agencies submitted emergency review requests to OMB that OMB has approved.

V. Request for Comment

Public comment is requested on all aspects of this joint notice. Comment is specifically invited on:

(a) Whether the proposed revisions to the collections of information that are the subject of this notice are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(b) The accuracy of the agencies' estimates of the burden of the information collections as they are proposed to be revised, including the validity of the methodology and assumptions used;

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

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

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments submitted in response to this joint notice will be shared among the agencies. All comments will become a matter of public record.

Dated: February 5, 2019.

Theodore J. Dowd,

Deputy Chief Counsel, Office of the Comptroller of the Currency.

Board of Governors of the Federal Reserve System, February 1, 2019.

Ann Misback,

Secretary of the Board.

Dated at Washington, DC, on February 1, 2019.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2019–02330 Filed 2–13–19; 8:45 am]

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

[15] 12 CFR part 3, subpart E (OCC); 12 CFR part 217, subpart E (Board); 12 CFR part 324, subpart E (FDIC).

[16] See 83 FR 49160 for a detailed description of the proposed revisions resulting from both ASU 2016–13 and EGRRCPA.

[17] The final rule has been scheduled for publication in the **Federal Register** on February 14, 2019.

[18] The agencies' final rule uses the term ''adjusted allowances for credit losses'' for regulatory capital purposes to distinguish such allowances from allowances for credit losses for accounting purposes.

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of Modified System of Records.

SUMMARY: As required by the Privacy Act of 1974, notice is hereby given that the Department of Veterans Affairs (VA) proposes to modify an existing system of records, Compensation, Pension, Education, and Vocational Rehabilitation and Employment Records—VA'' (58VA21/22/28).

DATES: Comments on this modified system of records must be received no later than 30 days after date of publication in the **Federal Register**. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by VA, the modified system of records will become effective a minimum of 30 days after date of publication in the **Federal Register**. If VA receives public comments, VA shall review the comments to determine whether any changes to the notice are necessary.

ADDRESSES: Written comments may be submitted through *http://www.regulations.gov/;* by mail or hand-delivery to Director, Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Ave. NW, Room 1064, Washington, DC 20420; or by fax to (202) 273–9026 (not a toll-free number). Comments should indicate that they are submitted in response to 58VA21/22/28. 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, comments may be viewed online at *http://www.regulations.gov/.*

FOR FURTHER INFORMATION CONTACT: Michael F. Palmer, Program Analyst, Office of Business Process Integration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 (336) 251–0392.

SUPPLEMENTARY INFORMATION: This system of records contains information regarding applicants for and beneficiaries of benefits chiefly administered by the Veterans Benefits Administration (VBA). This system is a core system for VBA programs. This system of records does not directly address health or memorial benefits administered respectively by the Veterans Health Administration or the National Cemetery Administration, the other two of the three Administrations within VA. This system was first published on March 3, 1976, and last amended on July 19, 2012, to include the addition of the Veterans Benefits Management System (VBMS) to this existing system of records, the establishment of the electronic claims folder (e-Folder) as the copy of record for Veterans claims processing; management, adjudication, and appeals; and to dispose of paper contents of a claims folder after the folder is electronically imaged. VBMS is the well-established, automated, fully electronic, Web-based claims processing system serving as the cornerstone of VBA's successful transition to paperless claims processing.

Expanding on the Department of Veterans Affairs System of Records Notification (SORN) of July 19, 2012, the Department proposes to reaffirm the establishment of the e-Folder as the *official record* for Veterans claims processing, management, adjudication, and appeals, and proposes the plan to properly dispose of paper duplicate copies and other physical media after imaging and upload into the e-Folder in accordance with Records Control Schedule VBA–1 Part 1 Section XIII, as authorized by the National Archives and Records Administration (NARA). VA also proposes to begin using the VBMS eFolder as an integrated benefits repository for records related to VA insurance and loan guarantee benefits. As such, this SORN has been updated accordingly, with the most notable changes being an increase to the number of Routine Uses (we have added Routine Use #2 and Routine Uses #75–83), and the type/number of Individuals Covered by this System (we have added Categories of Individuals Covered by this System #15–24). Please see applicable sections for further details. Complete information pertaining to the systems of records for the VA Loan Guaranty Program can be found in the 17VA26 SORN, entitled ''Loan Guaranty Fee Personnel and Program Participant Records—VA,'' and 55VA26 SORN, entitled ''Loan Guaranty Home, Condominium and Manufactured Home Loan Applicants Records, Specially Adapted Housing Applicant Records and Vendee Loan Applicant Records-VA.'' Complete information pertaining to the systems of records for VA Insurance can be found in the 36VA29 SORN, entitled ''Veterans and Uniformed Services Personnel Programs of U.S. Government Life Insurance—VA.'' Lastly, VA is adding internet protocol (IP) addresses as a type of record maintained in this system.

In 2012, VA partnered with the National Archives and Records Administration (NARA) to develop, test, and implement a ''smart scanning'' capability in support of the VBMS initiative. VA then began electronically imaging and uploading all incoming claims-related documentation into the VBMS eFolder. VA's current policy is: Once a paper document is scanned, the original paper source material is reclassified as a *duplicate copy.* The duplicate copy is then placed in storage at great taxpayer expense, and is not used in the claims adjudication process. The VBMS eFolder and the electronic images it contains are considered the official record, and are the exclusive means by which VA Decision Makers review claims-related documentation when processing a claim for Compensation or Pension benefits. The paper duplicate copies are not reviewed during the claims adjudication process; however, the mere storage of the paper duplicate copies has cost taxpayers in excess of $24 million to date. As VA's paperless modernization continues to expand, the cost of continued storage of all paper duplicate information is expected to exceed $500 million over the next ten years. Given the enormous expense of storing the paper duplicates compared to the minimal benefit conferred to Veterans, VA does not believe it can justify the cost of continuing to store paper duplicates. As such, VA is proposing that, after an extensive quality review and validation process to ensure completeness and accuracy of the electronic record, and a 3-year waiting period to ensure that all related claims and appeals have been completely and finally adjudicated, VA will dispose of paper duplicates in accordance with applicable laws and procedures. VA will continue to maintain the electronic images indefinitely as a permanent record.

We are adding Data breach response and remedial efforts to this SORN. VA may disclose information from this system to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that there has been a breach of the system of records; (2) VA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, VA (including its information systems, programs, and operations), and (3) the Federal Government, or national security; and the disclosure made to such agencies, entities, and persons is

reasonably necessary to assist in connection with VA's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

This routine use permits disclosures by the Department to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision of credit protection services as provided in 38 U.S.C. 5724.

A federal agency's ability to respond quickly and effectively in the event of a breach of federal data is critical to its efforts to prevent or minimize any consequent harm. An effective response necessitates disclosure of information regarding the breach to those individuals affected by it, as well as to persons and entities in a position to cooperate, either by assisting in notification to affected individuals or playing a role in preventing or minimizing harms from the breach.

Often, the information to be disclosed to such persons and entities is maintained by federal agencies and is subject to the Privacy Act (5 U.S.C. 552a). The Privacy Act prohibits the disclosure of any record in a system of records by any means of communication to any person or agency absent the written consent of the subject individual, unless the disclosure falls within one of twelve statutory exceptions. In order to ensure an agency is in the best position to respond in a timely and effective manner, in accordance with 5 U.S.C. 552a(b)(3) of the Privacy Act, agencies should publish a routine use for appropriate systems specifically applying to the disclosure of information in connection with response and remedial efforts in the event of a data breach.

VA may disclose information from this system to another Federal agency or Federal entity, when VA 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.

The narrative statement and an advance copy of the proposed changes have been sent to the appropriate Congressional committees and to the Director of the Office of Management and Budget (OMB) as required by title 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Signing Authority

The Senior Agency Official for Privacy, or designee, 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. James B. Ford, Acting Executive Director, Privacy, Office of Quality, Privacy and Risk, Office of Information and Technology, approved this document on June 27, 2018 for publication.

Dated: February 11, 2019.

Amy L. Rose,

Program Analyst, VA Privacy Service, Office of Information Security, Office of Information and Technology, Department of Veterans Affairs.

SYSTEM NAME AND NUMBER

Compensation, Pension, Education, and Vocational Rehabilitation and Employment Records—VA (58VA21/22/28)

SECURITY CLASSIFICATION:

This is an unclassified system.

SYSTEM LOCATION:

Records are maintained at VA regional offices, VA centers, the VA Records Management Center (RMC), St. Louis, Missouri, the Data Processing Center at Hines, Illinois, the Corporate Franchise Data Center in Austin, Texas, the VA Insurance Center and the Information Technology Center at Philadelphia, Pennsylvania, and Terremark Worldwide, Inc., Federal Hosting Facilities in Culpepper, Virginia, and Miami, Florida. Active educational assistance records are generally maintained at the regional processing office having jurisdiction over the educational institution, training establishment, or other entity where the claimant pursues or intends to pursue training.

The automated individual employee productivity records are temporarily maintained at the VA data processing facility serving the office in which the employee is located. Records provided to the Department of Housing and Urban Development (HUD) for inclusion on its Credit Alert Interactive Voice Response System (CAIVRS) are located at a data processing center under contract to HUD at Lanham, Maryland. Address locations of VA facilities are listed at: *https://www.va.gov/landing2_locations.htm.*

SYSTEM MANAGER(S):

Director, Compensation Service (21C), 810 Vermont Avenue NW, VA Central Office, Washington, DC 20420.

Director, Pension and Fiduciary Service (21PF), 810 Vermont Avenue NW, VA Central Office, Washington, DC 20420.

Director, Education Service (22), 810 Vermont Avenue NW, VA Central Office, Washington, DC 20420.

Director, Vocational Rehabilitation and Employment Service (28), 810 Vermont Avenue NW, VA Central Office, Washington, DC 20420.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 10 U.S.C. chapters 106a, 510, 1606 and 1607 and title 38, U.S.C., § 501(a) and Chapters 3, 11, 13, 15, 18, 19, 21, 23, 30, 31, 32, 33, 34, 35, 36, 37, 39, 51, 53, 55 and 77. Title 5 U.S.C. 5514.

PURPOSE(S) OF THE SYSTEM:

VA gathers or creates these records in order to enable it to administer statutory benefits programs to Veterans, Servicemembers, Reservists, and their spouses, surviving spouses, and dependents, who file claims for a wide variety of Federal Veteran's benefits administered by VA. See the statutory provisions cited in ''Authority for maintenance of the system.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The following categories of individuals are covered by this system.

1. Veterans who have applied for compensation for service-connected disability under title 38 U.S.C. chapter 11.
2. Veterans who have applied for nonservice-connected disability under title 38 U.S.C. chapter 15.
3. Veterans entitled to burial benefits under title 38 U.S.C. chapter 23.
4. Surviving spouses and children who have claimed pension based on nonservice-connected death of a Veteran under title 38 U.S.C. chapter 15.
5. Surviving spouses and children who have claimed death compensation based on service-connected death of a Veteran under title 38 U.S.C. chapter 11.
6. Surviving spouses and children who have claimed dependency and indemnity compensation for service-connected death of a Veteran under title 38 U.S.C. chapter 13.
7. Parents who have applied for death compensation based on service-connected death of a Veteran under title 38 U.S.C. chapter 11.
8. Parents who have applied for dependency and indemnity compensation for service-connected

death of a Veteran under title 38 U.S.C. chapter 13.

9. Individuals who applied for educational assistance benefits administered by VA under title 38 U.S.C.

10. Individuals who applied for educational assistance benefits maintained by the Department of Defense (DoD) under title 10 U.S.C. that are administered by VA.

11. Veterans who apply for training and employers who apply for approval of their programs under the provisions of the Emergency Veterans' Job Training Act of 1983, Public Law 98–77.

12. Any VA employee who generates or finalizes adjudicative actions using the Benefits Delivery Network (BDN), the Veterans Service Network (VETSNET), or Veterans Benefits Management System (VBMS) computer processing systems.

13. Veterans who apply for training and employers who apply for approval of their programs under the provisions of the Service Members Occupational Conversion and Training Act of 1992, Public Law 102–484.

14. Representatives of individuals covered by the system.

15. Fee personnel who may be paid by the VA or by someone other than the VA (*e.g.,* appraisers, compliance inspectors, management brokers, loan closing and fee attorneys who are not VA employees but are paid for actual case work performed).

16. Program participants (*e.g.,* property management brokers and agents, real estate sales brokers and agents, participating lenders and their employees, title companies whose fees are paid by someone other than the VA, and manufactured home dealers, manufacturers, and manufactured home park or subdivision owners).

17. Disabled veterans who have applied for and received specially adapted housing assistance under title 38, U.S.C. chapter 21;

18. Veterans, their spouses or unmarried surviving spouses who have applied for and received VA housing credit assistance under title 38, U.S.C., chapter 37;

19. Person(s) applying to purchase VA owned properties (vendee loans);

20. Transferee owners of properties encumbered by a VA-guaranteed, insured, direct or vendee loan (*e.g.,* individuals who have assumed a VA-guaranteed loan and those who have purchased property directly from the VA);

21. Individuals other than those previously identified who may have applied for loan guarantee benefits.

22. Veterans (not including dependents) and members of the uniformed services (including dependents) who have applied for and/or have been issued government life insurance.

23. Beneficiaries of government life insurance entitled to or in receipt of insurance proceeds.

24. Attorneys drawing fees for aiding in settlement of VA insurance claims. The individuals noted above are covered by this system based on applications, claims, and notices of eligibility for the following government life insurance programs provided in title 38 U.S.C. chapters 19 and 21:

(1) U.S. Government Life Insurance (USGLI) under Section 1942.

(2) National Service Life Insurance (NSLI) under Section 1904.

(3) Veterans' Special Life Insurance (VSLI) under Section 1923.

(4) Veterans' Reopened Insurance (VRI) under Section 1925.

(5) Service-Disabled Veterans Insurance (S–DVI) under Section 1922 and 1922A.

(6) Veterans' Mortgage Life Insurance (VMLI) under Section 2106.

(7) Servicemembers' Group Life Insurance (SGLI), including Family Servicemembers' Group Life Insurance (FSGLI), Veterans' Group Life Insurance (VGLI), and Servicemembers' Group Life Insurance Traumatic Injury Protection (TSGLI) under Sections 1967 through 1980A.

CATEGORIES OF RECORDS IN THE SYSTEM:

The record, or information contained in the record, may include identifying information (*e.g.,* name, address, social security number); military service and active duty separation information (*e.g.,* name, service number, date of birth, rank, sex, total amount of active service, branch of service, character of service, pay grade, assigned separation reason, service period, whether Veteran was discharged with a disability, reenlisted, received a Purple Heart or other military decoration); payment information (*e.g.,* Veteran payee name, address, dollar amount of readjustment service pay, amount of disability or pension payments, number of nonpay days, any amount of indebtedness (accounts receivable) arising from title 38 U.S.C. benefits and which are owed to the VA); medical information (*e.g.,* medical and dental treatment in the Armed Forces including type of service-connected disability, medical facilities, or medical or dental treatment by VA health care personnel or received from private hospitals and health care personnel relating to a claim for VA disability benefits or medical or dental treatment); personal information (*e.g.,* marital status, name and address of dependents, internet protocol addresses, occupation, amount of education of a Veteran or a dependent, dependent's relationship to Veteran); education benefit information (*e.g.,* information arising from utilization of training benefits such as a Veteran trainee's induction, reentrance or dismissal from a program or progress and attendance in an education or training program); applications for compensation, pension, education and vocational rehabilitation benefits and training which may contain identifying information, military service and active duty separation information, payment information, medical and dental information, personal and education benefit information relating to a Veteran or beneficiary's incarceration in a penal institution (*e.g.,* name of incarcerated Veteran or beneficiary, claims file number, name and address of penal institution, date of commitment, type of offense, scheduled release date, Veteran's date of birth, beneficiary relationship to Veteran and whether Veteran or beneficiary is in a work release or half-way house program, on parole or has been released from incarceration).

The VA employee's BDN, VETSNET or VBMS identification numbers, the number and kind of actions generated and/or finalized by each such employee, the compilation of cases returned for each employee.

Records (or information contained in records) may also include: Applications for certificates of eligibility (these applications generally contain information from a veteran's military service records except for character of discharge); applications for FHA Veterans' low-down payment loans (these applications generally contain information from a Veteran's military service records including whether or not a veteran is in the service); applications for a guaranteed or direct loan, applications for release of liability, applications for substitutions of VA entitlement and applications for specially adapted housing (these applications generally contain information relating to employment, income, credit, personal data; *e.g.,* social security number, marital status, number and identity of dependents; assets and liabilities at financial institutions, profitability data concerning business of self-employed individuals, information relating to an individual Veteran's loan account and payment history on a VA-guaranteed, direct, or vendee loan on an acquired property, medical information when specially adapted housing is sought, and information regarding

whether a Veteran owes a debt to the United States) and may be accompanied by other supporting documents which contain the above information; applications for the purchase of a VA acquired property (*e.g.,* vendee loans—these applications generally contain personal and business information on a prospective purchaser such as social security number, credit, income, employment history, payment history, business references, personal information and other financial obligations and may be accompanied by other supporting documents which contain the above information); loan instruments including deeds, notes, installment sales contracts, and mortgages; property management information; *e.g.,* condition and value of property, inspection reports, certificates of reasonable value, correspondence and other information regarding the condition of the property (occupied, vandalized), and a legal description of the property; information regarding VA loan servicing activities regarding default, repossession and foreclosure procedures, assumability of loans, payment of taxes and insurance, filing of judgments (liens) with State or local authorities and other related matters in connection with active and/or foreclosed loans; information regarding the status of a loan (*e.g.,* approved, pending or rejected by the VA); Applications by individuals to become VA-approved fee basis appraisers, compliance inspector, fee attorneys, or management brokers. These applications include information concerning applicant's name, address, business phone numbers, social security numbers or taxpayer identification number, and professional qualifications; applications by non-supervised lenders for approval to close guaranteed loans without the prior approval of VA (automatically); applications by lenders supervised by Federal or State agencies for designation as supervised automatic lenders in order that they may close loans without the prior approval (automatically) of the VA; applications for automatic approval or designation contain information concerning the corporate structure of the lender, professional qualifications of the lender's officers or employees, financial data such as profit and loss statements and balance sheets to insure the firm's financial integrity; identifying information such as names, business names (if applicable), addresses, phone numbers and professional resumes of corporate officials or employees; corporate structure information on prior approval lenders, participating real estate sales brokers or agents, developers, builders, investors, closing attorneys or other program participants as necessary to carry out the functions of the Loan Guaranty Program; records of performance concerning appraisers, compliance inspectors, management brokers, or fee attorneys on both firms and individual employees; records of performance including disciplinary proceedings, concerning program participants; *e.g.,* lenders, investors, real estate brokers, builders, fee appraisers, compliance inspectors and developers both as to the firm and to individual employees maintained on an as-needed basis to carry out the functions of the Loan Guaranty program; National Control Lists which identify suspended real estate brokers and agents, lenders and their employees, investors, manufactured home dealers and manufacturers, and builders or developers; and a master record of the National Control List (*e.g.,* Master Control List) which includes information regarding parties previously suspended but currently reinstated to participation in the Loan Guaranty program in addition to all parties currently suspended.

Life insurance records (or information contained in records) may consist of:

1. Applications for insurance, including the name and address of the Veteran or member of the uniformed services, email address, phone number, correspondence to and from the veteran or member of the uniformed services or their legal representatives, date of birth, social security number, military service number, dates of service, military ranking, character of discharge, VA file number, plan or type of insurance, disability rating, medical information regarding disability and health history, method of payment, amount of insurance coverage requested, and bank routing and account numbers. Applications for Veterans' Mortgage Life Insurance (VMLI), including supporting mortgage documents, contain the address of the mortgaged property, name and address of the mortgagor, the mortgage account number, the rate of interest, the original amount of the mortgage, and the current amount of the mortgage, the monthly payment amount, the mortgage payment period, and VA Specially Adapted Grant Cards (which contain the Veteran's or uniformed services member's name, address, dates of military service, branch of service, method of separation, whether the Veteran or member of the uniformed services has VMLI, the name and address of the lender, the legal description and property address, improvements to such property, date applied for disability compensation, date of initial application submission, grant information, amount of the grant approved or whether the grant was denied or canceled).

2. Beneficiary and option designation information, including the names and addresses of principal and contingent beneficiaries, beneficiary social security number, share amount to each beneficiary, the method of payment, and the designated estate(s) and trust(s).

3. Insurance contract information, including: (a) Authorization of allotment payment; (b) authorization for deduction from VA benefit payments; (c) authorization for deduction from military retired pay; (d) authorization for deduction from employee payroll; (e) paid dividend information; (f) claims for disability or death payments; (g) cash value, policy loan, and lien information; (h) a listing of lapsed actions and unpaid insurance proceeds; (i) payment vouchers; (j) reinstatement information; (k) premium records status, and retired status of the policy; (l) court-martial orders; (m) copies of personal papers of the insured, including birth certificate, marriage license, divorce decree, citizen or naturalization papers, death certificate, adoption decree, and family support documents; (n) correspondence to and from the Veteran, member of the uniformed services, legal representative and payee; (o) employment information; (p) returned check and check tracer information; (q) court documents; and (r) insurance death claims settlement information, including indebtedness, interest, and other credits.

4. Records of checks withheld from delivery to certain foreign countries.

5. Index of payees, including CO index cards and premium record cards.

6. Disability Outreach Tracking System (DOTS) records stored in the Veterans Insurance Claims Tracking and Response System (VICTARS) including the Veteran's or uniformed services member's name, address, phone number, and disability status.

7. Policy information and access history from the VA Insurance website self-service-portal stored in VICTARS, which includes the name of the insured, file number, policy number, address, phone number, email address, loan status, including loan amount requested, denied, or pending, the date of request for information, loan history, policy changes, dividend option changes, and VA Insurance website pages accessed.

8. Information from the VA Insurance website, which provides access to Veterans for completion of an application for Service-Disabled Veterans Insurance (S–DVI), which

includes the Veteran's name, address, social security number, date of birth, phone number, medical history, email address, and beneficiary information, such as the beneficiary's name, address, and social security number.

RECORD SOURCE CATEGORIES:

Veterans, Servicemembers, Reservists, spouses, surviving spouses, dependents and other beneficiaries of the Veteran, accredited service organizations and other VA-approved representatives of the Veteran, VA-supervised fiduciaries (*e.g.,* VA Federal fiduciaries, court-appointed fiduciaries), military service departments, VA medical facilities and physicians, private medical facilities and physicians, education and rehabilitation training establishments, State and local agencies, other Federal agencies including the Department of Defense (DoD), Social Security Administration (SSA); U.S. Treasury Department, State, local, and county courts and clerks, Federal, State, and local penal institutions and correctional facilities, other third parties and other VA records, Office of Servicemembers' Group Life Insurance (OSGLI); commercial insurance companies; undertakers; lending institutions holding a veteran's or uniformed services member's mortgage; VA Loan Guaranty records; contractors remodeling or enlarging or adding construction to existing homes; relatives and other interested persons; Westlaw and InfoUSA; Inquiry Routing & Information System (IRIS) (maintained under System of Records ''151VA005N'' by the Office of Information &Technology), brokers and builder/sellers, credit and financial reporting agencies, an applicant's credit sources, depository institutions and employers, independent auditors and accountants, hazard insurance companies, taxing authorities, title companies, fee personnel, business and professional organizations, the general public, and other parties of interest involving VA-guaranteed, insured, vendee or direct loans or specially adapted housing.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Congress: VA may disclose information from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

VA must be able to provide information about individuals to adequately respond to inquiries from Members of Congress at the request of constituents who have sought their assistance.

2. Data breach response and remedial efforts: VA may, on its own initiative, disclose information from this system to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that there has been a breach of the system of records; (2) VA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, VA (including its information systems, programs, and operations), the Federal Government, or national security; and the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with VA's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

a. *Effective Response.* A federal agency's ability to respond quickly and effectively in the event of a breach of federal data is critical to its efforts to prevent or minimize any consequent harm. An effective response necessitates disclosure of information regarding the breach to those individuals affected by it, as well as to persons and entities in a position to cooperate, either by assisting in notification to affected individuals or playing a role in preventing or minimizing harms from the breach.

b. *Disclosure of Information.* Often, the information to be disclosed to such persons and entities is maintained by federal agencies and is subject to the Privacy Act (title 5 U.S.C. 552a). The Privacy Act prohibits the disclosure of any record in a system of records by any means of communication to any person or agency absent the written consent of the subject individual, unless the disclosure falls within one of twelve statutory exceptions. In order to ensure an agency is in the best position to respond in a timely and effective manner, in accordance with title 5 U.S.C. 552a(b)(3) of the Privacy Act, agencies should publish a routine use for appropriate systems specifically applying to the disclosure of information in connection with response and remedial efforts in the event of a data breach.

3. Data breach response and remedial efforts with another Federal agency: VA may, on its own initiative, disclose information from this system to another Federal agency or Federal entity, when VA 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.

4. Law Enforcement: VA may, on its own initiative, disclose information in this system, except the names and home addresses of Veterans and their dependents, which is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, state, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order. On its own initiative, VA may also disclose the names and addresses of Veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.

VA must be able to provide on its own initiative information that pertains to a violation of laws to law enforcement authorities in order for them to investigate and enforce those laws. Under title 38 U.S.C. 5701(a) and (f), VA may disclose the names and addresses of Veterans and their dependents to Federal entities with law enforcement responsibilities. This is distinct from the authority to disclose records in response to a qualifying request from a law enforcement entity, as authorized by Privacy Act subsection title 5 U.S.C. 552a(b)(7).

5. Litigation: VA may disclose information from this system of records to the Department of Justice (DoJ), either on VA's initiative or in response to DoJ's request for the information, after either VA or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that release of the records to the DoJ is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its own initiative, may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records.

To determine whether to disclose records under this routine use, VA will comply with the guidance promulgated by the Office of Management and Budget in a May 24, 1985, memorandum entitled ''Privacy Act Guidance—Update,'' currently posted at *https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/assets/OMB/inforeg/guidance1985.pdf*.

VA must be able to provide information to DoJ in litigation where the United States or any of its components is involved or has an interest. A determination would be made in each instance that under the circumstances involved, the purpose is compatible with the purpose for which VA collected the information. This routine use is distinct from the authority to disclose records in response to a court order under subsection (b)(11) of the Privacy Act, title 5 U.S.C. 552(b)(11), or any other provision of subsection (b), in accordance with the court's analysis in *Doe* v. *DiGenova,* 779 F.2d 74, 78–85 (D.C. Cir. 1985) and *Doe* v. *Stephens,* 851 F.2d 1457, 1465–67 (D.C. Cir. 1988).

6. Contractors: VA may disclose information from this system of records to individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor, subcontractor, public or private agency, or other entity or individual with whom VA has a contract or agreement to perform services under the contract or agreement.

This routine use includes disclosures by an individual or entity performing services for VA to any secondary entity or individual to perform an activity that is necessary for individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to provide the service to VA.

This routine use, which also applies to agreements that do not qualify as contracts defined by Federal procurement laws and regulations, is consistent with OMB guidance in OMB Circular A–130, App. I, paragraph 5a(1)(b) that agencies promulgate routine uses to address disclosure of Privacy Act-protected information to contractors in order to perform the services contracts for the agency.

7. Equal Employment Opportunity Commission (EEOC): VA may disclose information from this system to the EEOC when requested in connection with investigations of alleged or possible discriminatory practices, examination of Federal affirmative employment programs, or other functions of the Commission as authorized by law or regulation.

VA must be able to provide information to EEOC to assist it in fulfilling its duties to protect employees' rights, as required by statute and regulation.

8. Federal Labor Relations Authority (FLRA): VA may disclose information from this system to the FLRA, including its General Counsel, information related to the establishment of jurisdiction, investigation, and resolution of allegations of unfair labor practices, or in connection with the resolution of exceptions to arbitration awards when a question of material fact is raised; for it to address matters properly before the Federal Services Impasses Panel, investigate representation petitions, and conduct or supervise representation elections.

VA must be able to provide information to FLRA to comply with the statutory mandate under which it operates.

9. Merit Systems Protection Board (MSPB): VA may disclose information from this system to the MSPB, or the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel practices, and such other functions promulgated in title 5 U.S.C. 1205 and 1206, or as authorized by law.

VA must be able to provide information to MSPB to assist it in fulfilling its duties as required by statute and regulation.

10. National Archives and Records Administration (NARA) and General Services Administration (GSA): VA may disclose information from this system to NARA and GSA in records management inspections conducted under title 44, U.S.C.

NARA is responsible for archiving old records which are no longer actively used but may be appropriate for preservation, and for the physical maintenance of the Federal government's records. VA must be able to provide the records to NARA in order to determine the proper disposition of such records.

11. The record of an individual who is covered by this system or records may be disclosed to a Member of Congress, or staff person acting for the member when, the member or staff person request the record on behalf of and at the written request of that individual.

12. Any information in this system may be disclosed to a Federal agency, upon its official request, to the extent that it is relevant and necessary to that agency's decision regarding: The hiring, retention or transfer of an employee; the issuance of a security clearance; the letting of a contract; or the issuance or continuance of a license, grant or other benefit given by that agency. However, in accordance with an agreement with the U.S. Postal Service, disclosures to the U.S. Postal Service for decisions concerning the employment of Veterans will only be made with the Veteran's prior written consent.

13. Any information in this system may be disclosed to a State or local agency, upon official request, to the extent that it is relevant and necessary to that agency's decision on: The hiring, retention or transfer of an employee; the issuance of a security clearance; the letting of a contract; or the issuance or continuance of a license, grant or other benefit by that agency including eligibility for unemployment compensation; provided, that if the information pertains to a Veteran, the name and address of the Veteran will not be disclosed unless the name and address are provided first by the requesting State or local agency.

14. VA may disclose on its own initiative any information in this system, except the names and home addresses of individuals, that are relevant to a suspected violation or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statue or by regulation, rule or order issued pursuant thereto, to a Federal, State, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, rule, regulation or order.

15. VA may disclose on its own initiative the names and addresses of individuals, that are relevant to a suspected violation or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal agency charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statue, regulation, rule or order.

16. The name and address of an individual, which is relevant to a suspected violation or reasonably imminent violation of law concerning public health or safety, whether civil, criminal or regulatory in nature an whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, may be

disclosed to any foreign, State or local governmental agency or instrumentality charged under applicable law with the protection of the public health or safety if a qualified representative of such organization, agency or instrumentality has made a written request that such name and address be provided for a purpose authorized by law.

17. The name, address, entitlement code (*e.g.,* compensation or pension), period(s) of service, sex, and date(s) of discharge may be disclosed to any nonprofit organization if the release is directly connected with the conduct of programs and the utilization of benefits under title 38 U.S.C. Disclosures may be in the form of a computerized list.

18. Any information in this system, except for the name and address of an individual, may be disclosed to a Federal agency in order for VA to obtain information relevant to the issuance of a benefit under title 38 U.S.C. The name and address of an individual may be disclosed to a Federal agency under this routine use if they are required by the Federal agency to respond to the VA inquiry.)

19. Any information in this system may be disclosed in connection with any proceeding for the collection of an amount owed to the United States by virtue of a person's participation in any benefit program administered by VA when in the judgment of the Secretary, or official generally delegated such authority under standard agency delegation of authority rules (38 CFR 2.6), such disclosure is deemed necessary and proper, in accordance with title 38 U.S.C. 5701(b)(6).

20. The name and address of an individual, and other information as is reasonably necessary to identify such individual, may be disclosed to a consumer reporting agency for the purpose of locating the individual, or obtaining a consumer report to determine the ability of the individual to repay an indebtedness to the United States arising by virtue of the individual's participation in a benefits program administered by the VA, provided that the requirements of title 38 U.S.C. 5701(g)(2) have been met.

21. The name and address of an individual, and other information as is reasonably necessary to identify such individual, including personal information obtained from other Federal agencies through computer matching programs, and any information concerning the individual's indebtedness to the United States by virtue of the person's participation in a benefits program administered by VA, may be disclosed to a consumer reporting agency for purposes of assisting in the collection of such indebtedness, provided that the provisions of title 31 U.S.C. 3701–3702 and 3711–3718; and 38 U.S.C. 5701(g)(4) have been met.

22. Any information in this system, including available identifying information regarding the debtor, such as name of debtor, last known address of debtor, VA insurance number, VA loan number, VA claim number, place of birth, date of birth of debtor, name and address of debtor's employer or firm and dates of employment may be disclosed, under this routine use, except to consumer reporting agencies, to a third party in order to obtain current name, address, locator, and credit report in connection with any proceeding for the collection of an amount owed to the United States by virtue of a person's participation in any VA benefit program when in the judgment of the Secretary such disclosure is deemed necessary and proper. This purpose is consistent with the Federal Claims Collection Act of 1966 (Pub. L. 89–508, title 31 U.S.C. 951–953 and 4 CFR parts 101–105 and title 38 U.S.C. 5701(b)(6)).

23. Any information in this system, including the nature and amount of a financial obligation, may be disclosed to a debtor's employing agency or commanding officer so that the debtor-employee may be counseled by his or her Federal employer or commanding officer and to assist in the collection of unpaid financial obligations owed VA.

24. Payment information may be disclosed to the Department of the Treasury, in accordance with its official request, to permit delivery of benefit payments to Veterans or other beneficiaries.

25. Medical information may be disclosed in response to a request from the superintendent of a State hospital for psychotic patients, a commissioner or head of a State department of mental hygiene, or a head of a State, county or city health department or any fee basis physician or sharing institution in direct connection with authorized treatment for a Veteran, provided the name of the individual to whom the record pertains is given and the information will be treated as confidential, as is customary in civilian professional medical practice.

26. The name, address, VA file number, effective date of compensation or pension, current and historical benefit pay amounts for compensation or pension, service information, date of birth, competency payment status, incarceration status, and social security number of Veterans and their surviving spouses may be disclosed to the following agencies upon their official request: DoD; Defense Manpower Data Center; Marine Corps; Department of Homeland Security; Coast Guard; Public Health Service; National Oceanic and Atmospheric Administration and Commissioned Officer Corps in order for these departments and agencies and VA to reconcile the amount and/or waiver of service, department and retired pay. These records may also be disclosed as a part of an ongoing computer-matching program to accomplish these purposes. This purpose is consistent with title 10 U.S.C. 12316, title 38 U.S.C. 5304 and title 38 U.S.C. 5701.

27. The amount of pension, compensation, dependency and indemnity compensation, educational assistance allowance, retirement pay and subsistence allowance of any individual identified to VA may be disclosed to any person who applies for such information.

28. Identifying, personal, payment and medical information may be disclosed to a Federal, State, or local government agency at the request of a Veteran in order to assist the Veteran and ensure that all of the title 38 U.S.C. or other benefits to which the Veteran is entitled are received. This information may also be disclosed upon the request from a Federal agency, or to a State or local agency, provided the name and address of the Veteran is given beforehand by the requesting agency, in order to assist the Veteran in obtaining a non-title 38 U.S.C. benefit to which the Veteran is entitled. These records may also be disclosed as part of an ongoing computer-matching program to accomplish this purpose.

29. Any information in this system, which directly affects payment or potential payment of benefits to contesting claimants, including parties claiming an apportioned share of benefits, may be coequally disclosed to each affected claimant upon request from that claimant in conjunction with the claim for benefits sought or received.

30. Any information in this system, such as identifying information, nature of a claim, amount of benefit payments, percentage of disability, income and medical expense information maintained by VA which is used to determine the amount payable to recipients of VA income-dependent benefits and personal information, may be disclosed to the Social Security Administration (SSA), upon its official request, in order for that agency to determine eligibility regarding amounts of social security benefits, or to verify other information with respect thereto. These records may also be disclosed as

part of an ongoing computer-matching program to accomplish this purpose.

31. VA may disclose an individual's identifying information to an educational institution, training establishment, or other entity which administers programs approved for VA educational assistance in order to assist the individual in completing claims forms, to obtain information necessary to adjudicate the individual's claim, or to monitor the progress of the individual who is pursuing or intends to pursue training at the request of the appropriate institution, training establishment, or other entity administrating approved VA educational programs or at the request of the Veteran.

32. Medical data (excluding the name and address of a Veteran unless the name and address are furnished by the requestor) may be disclosed to epidemiological and other research facilities approved by the Under Secretary for Health to obtain data from those facilities necessary to assist in medical studies on Veterans for VA or for any research purposes determined to be necessary and proper by the Under Secretary for Health.

33. The name(s) and address(es) of a Veteran may be disclosed to another Federal agency or to a contractor of that agency, at the written request of the head of that agency or designee of the head of that agency for the purpose of conducting government research necessary to accomplish a statutory purpose of that agency.

34. Any information in this system relevant to a Veteran's claim such as the name, address, the basis and nature of a claim, amount of benefit payment information, medical information and military service and active duty separation information may be disclosed at the request of the Veteran to accredited service organizations, VA-approved claims agents and attorneys acting under a declaration of representation so that these individuals can aid Veterans in the preparation, presentation and prosecution of claims under the laws administered by VA.

35. Identifying and payment information may be disclosed, upon the request of a Federal agency, to a State or local government agency, to determine a beneficiary's eligibility under programs provided for under Federal legislation and for which the requesting Federal agency has responsibility. These records may also be disclosed as a part of an ongoing computer-matching program to accomplish these purposes. This purpose is consistent with title 38 U.S.C. 5701.

36. Any information in this system such as the amount of benefit or disability payments and medical information may be disclosed in the course of presenting evidence to a court, magistrate, or administrative authority, in matters of guardianship, inquests, and commitments, to private attorneys representing Veterans rated incompetent in conjunction with issuance of Certificates of Incompetency, and to probation and parole officers in connection with court-required duties.

37. Any information in this system including medical information, the basis and nature of claim, the amount of benefits and personal information may be disclosed to a VA Federal fiduciary or a guardian ad litem in relation to his or her representation of a Veteran only to the extent necessary to fulfill the duties of the VA Federal fiduciary or the guardian ad litem.

38. Any relevant information (including changes in disability ratings) may be disclosed to the DOJ and United States Attorneys in the defense or prosecution of litigation involving the United States, and to Federal agencies upon their request in connection with review of administrative tort claims and potential tort claims filed under the Federal Tort Claims Act, title 28 U.S.C. 2672, the Military Claims Act, title 10 U.S.C. 2733, and other similar claims statutes.

39. Any information in this system including the name, social security number, date of birth, delimiting date and remaining entitlement of VA educational benefits, may be disclosed to the Department of Education (ED) upon its official request, or contractor thereof, for specific use by the ED to validate information regarding entitlement to VA benefits which is submitted by applicants who request educational assistance grants from the ED. The ED or contractor thereof will not use such information for any other purpose. These records may also be disclosed as part of an ongoing computer-matching program to accomplish this purpose.

40. VA may, at the request of the individual, disclose identifying information of an individual who is pursuing or intends to pursue training at an educational institution, training establishment, or other entity which administers programs approved for VA educational assistance in order for the VA to obtain sufficient information necessary to pay that individual or the educational or training establishment the correct monetary amounts in an expeditious manner. However, information will not be provided under this routine use to an educational institution, training establishment, or other entity when the request is clearly an attempt by that establishment to seek assistance in collection attempts against the individual.

41. Identifying information and information regarding the induction, reentrance and dismissal of a disabled Veteran from a vocational rehabilitation program may be disclosed at the request of the Veteran to a VA-approved vocational rehabilitation training establishment to ensure that the trainee receives the maximum benefit from training.

42. Identifying information and information regarding the extent and nature of a Veteran's disabilities with respect to any limitations to be imposed on the Veteran's vocational programs may be disclosed at the request of the Veteran to a VA-approved vocational rehabilitation training establishment to ensure that the trainee receives the maximum benefit from training.

43. Information regarding the type and amount of training/education received, and the name and address of a Veteran, may be disclosed at the request of a Veteran to local and State agencies and to prospective employers in order to assist the Veteran in obtaining employment or further training.

44. The name, claims file number and any other information relating to a Veteran's or beneficiary's incarceration in a penal institution and information regarding a dependent's right to a special apportionment of the incarcerated individual's VA benefit payment may be disclosed to those dependents who may be eligible for entitlement to such apportionment in accordance with title 38 U.S.C. 5313 and § 5307.

45. The name, claims file number and any other information relating to an individual who may be incarcerated in a penal institution may, pursuant to an arrangement, be disclosed to penal institutions or to correctional authorities in order to verify information concerning the individual's incarceration status. The disclosure of this information is necessary to determine that individual's continuing eligibility as authorized under title 38 U.S.C. 5313, § 5307. These records may also be disclosed as part of an ongoing computer-matching program to accomplish this purpose.

46. Identifying information, except for the name and address of a Veteran, may be disclosed to a State agency for the purpose of conducting a computer match to determine if income and employment data are being properly reported to VA and to detect the

unwarranted payment of benefits under title 38 U.S.C.

47. Identifying, disability, and award (type, amount and reasons for award) information may be released to the Department of Labor (DOL) in order for the DOL to conduct a computer matching program against the Office of Workers' Compensation Programs Federal Employees Compensation File, DOL/ESA–13, published in 46 FR 12357 on February 13, 1981. This match will permit the DOL to verify a person's eligibility for DOL payments as well as to detect situations where recipients may be erroneously receiving concurrent multiple payments from the DOL and VA, to identify areas where legislative and regulatory amendments directed toward preventing overpayments are needed, and to collect debts owed to the United States Government. This matching program is performed pursuant to the DOL Inspector General's authority under Public Law 95–452, section 4(a) to detect and prevent fraud and abuse. This disclosure is consistent with title 38 U.S.C. 5701(b)(3).

48. The beneficiary's name, address, social security number and the amount (excluding interest) of any indebtedness waived under title 38 U.S.C. 5302, or compromised under 4 CFR part 103 may be disclosed to the Treasury Department, Internal Revenue Service (IRS), as a report of income under title 26 U.S.C. 61(a)(12).

49. Identifying information, including social security number, except for the name and address, may be disclosed to a Federal, State, County or Municipal agency for the purpose of conducting computer matches to obtain information to validate the entitlement of an individual, who is receiving or has received Veterans' benefits under title 10 or title 38 U.S.C. The name and address of individuals may also be disclosed to a Federal agency under this routine use if required by the Federal agency in order to provide information.

50. Identifying information, including the initials and abbreviated surname, the social security number, the date of birth and coding indicating the category of the individual's records, the degree of disability, the benefit program under which benefits are being paid and the computed amount of VA benefits for a calendar year may be released to the Department of the Treasury, and IRS, in order for IRS to conduct a computer matching program against IRS Forms 1040, Schedule R, Credit for the Elderly and the Permanently and Totally Disabled. This match will permit IRS to determine the eligibility for and the proper amount of Elderly and Disabled Credits claimed on IRS Form 1040, Schedule R. This matching program is performed pursuant to the provisions of Internal Revenue Code Section 7602. This disclosure is consistent with title 38 U.S.C. 5701(b)(3).

51. Identifying information, such as name, social security number, VA claim number, date and place of birth, etc., in this system may be disclosed to an employer or school having information relevant to a claim in order to obtain information from the employer or school to the extent necessary to determine that eligibility for VA compensation or pension benefits continues to exist or to verify that there has been an overpayment of VA compensation or pension benefits. Any information in this system also may be disclosed to any of the above-entitled individuals or entities as part of ongoing computer matching programs to accomplish these purposes.

52. The name of a Veteran, or other beneficiary, other information as is reasonably necessary to identify such individual, and any other information concerning the individual's indebtedness by virtue of a person's participation in a benefits program administered by VA, may be disclosed to the Treasury Department, IRS, for the collection of title 38, U.S.C. benefit overpayments, overdue indebtedness, and/or costs of services provided to an individual not entitled to such services, by the withholding of all or a portion of the person's Federal income tax refund.

53. Veterans' addresses which are contained in this system of records may be disclosed to the Defense Manpower Data Center, upon its official request, for military recruiting command needs, DoD civilian personnel offices' mobilization studies and mobilization information, debt collection, and Individual Ready Reserve Units' locator services.

54. The name, address, VA file number, date of birth, date of death, social security number, and service information may be disclosed to the Defense Manpower Data Center. DoD will use this information to identify retired Veterans and dependent members of their families who have entitlement to DoD benefits but who are not identified in the Defense Enrollment Eligibility Reporting System program and to assist in determining eligibility for Civilian Health and Medical Program of the Uniformed Services benefits. This purpose is consistent with title 38 U.S.C. 5701. These records may also be disclosed as part of an ongoing computer-matching program to accomplish this purpose.

55. The name, address, VA file number, social security number, sex of Veteran, date(s) of birth of the Veteran and dependents, current benefit pay amounts for compensation or pension, pay status, check amount, aid and attendance status, Veteran and spouse annual income amounts and type and combined degree of disability will be disclosed to the Department of Health and Human Services. The SSA will use the data in the administration of the Supplemental Security Income payment system as prescribed by Public Law 92–603. These records may also be disclosed as part of an ongoing computer-matching program to accomplish these purposes. This purpose is consistent with title 38 U.S.C. 5701.

56. The names and current addresses of VA beneficiaries who are identified by finance centers of individual uniformed services of DoD and the Department of Homeland Security (Coast Guard) as responsible for the payment of Survivor Benefit Plan (SBP) premium payments to be released from this system of records to them upon their official written request for such information for their use in attempting to recover amounts owed for SBP premium payments.

57. This routine use authorizes VA to compile lists of the social security numbers and loan account numbers of all persons with VA-guaranteed and portfolio loans in default, or VA loans on which there has been a foreclosure and the Department paid a claim and provide these records to HUD for inclusion in its CAIVRS. Information included in this system may be disclosed to all participating agencies and lenders who participate in the agencies' programs to enable them to verify information provided by new loan applicants and evaluate the creditworthiness of applicants. These records may also be disclosed as part of an ongoing computer-matching program to accomplish these purposes.

58. Identifying information including social security number, abbreviated surname, first and middle initial, date of birth, sex and claim number, and excluding the full name and address, may be disclosed to the SSA for the purpose of conducting a computer match to obtain information to validate the social security number maintained in VA records.

59. Any information contained in the files of Veterans whose claims were referred to VA Central Office for an advisory opinion concerning their claims that their disabilities were incurred secondary to occupational radiation exposure may be disclosed to

the Department of the Navy. The information to be furnished to the Navy would include the medical opinions, dose estimates, advisory opinions, and rating decisions including Veterans' names, addresses, VA claim numbers, social security numbers and medical information. The requested information may be disclosed to the Department of the Navy upon receipt of its official written request for such information for its use in the review and assessment of its occupational radiation exposure controls and training.

60. A Veteran's claims file number and folder location may be disclosed to a court of proper jurisdiction that has issued a garnishment order for that Veteran under title 42 U.S.C. 659 through 660. An individual's identifying and payment information may be disclosed to the educational institution, training establishment, or other entity the individual attends (or attended) if that individual received educational assistance from VA based on training at that educational institution, training establishment, or entity. VA will disclose this information to assist the educational institution, training establishment, or other entity in verifying the individual's receipt of VA educational assistance and to assist the individual in applying for additional financial aid (*e.g.* student loans).

61. The name and address of a prospective, present, or former accredited representative, claims agent or attorney and any information concerning such individual which is relevant to a refusal to grant access privileges to automated Veterans' claims records, or a potential or past suspension or termination of such access privileges may be disclosed to the entity employing the individual to represent Veterans on claims for Veterans benefits.

62. The name and address of a former accredited representative, claim agent or attorney, and any information concerning such individual, except a Veteran's name and home address, which is relevant to a revocation of such access privileges may be disclosed to an appropriate governmental licensing organization where VA determines that the individual's conduct that resulted in revocation merits reporting.

63. A record from this system (other than the address of the beneficiary) may be disclosed to a former representative of a beneficiary to the extent necessary to develop and adjudicate a claim for payment of attorney fees to such representative from past-due benefits under title 38 U.S.C. 5904(d) and Public Law 109–461 or to review a fee agreement between such representative and the beneficiary for reasonableness under title 38 U.S.C. 5904(c)(2) and Public Law 109–461.

64. Disclosure of tax returns and return information received from the IRS may be made only as provided by title 26 U.S.C. 6103 (an IRS confidentiality statute) also covering any IRS tax return information provided as part of an ongoing computer matching program.

65. Where VA determines that there is good cause to question the legality or ethical propriety of the conduct of a person or organization representing a person in a matter before VA, a record from this system may be disclosed, on VA's initiative, to any or all of the following: (1) Applicable civil or criminal law enforcement authorities and (2) a person or entity responsible for the licensing, supervision, or professional discipline of the person or organization acting as a representative. Name and home addresses of Veterans and their dependents will be released on VA's initiative under this routine use only to Federal entities.

66. The name and address of a VA beneficiary, and other information as is reasonably necessary to identify such a beneficiary, who has been adjudicated as incompetent under 38 CFR 3.353, may be provided to the Attorney General of the United States or his/her designee, for use by the DOJ in the National Instant Criminal Background Check System mandated by the Brady Handgun Violence Prevention Act, Public Law 103–159.

67. Disclosure may be made to the National Archives and Records Administration (NARA) and General Services Administration in record management inspections and such other activities conducted under Authority of title 44 U.S.C.

68. VA may disclose information from this system of records to the DOJ, either on VA's initiative or in response to DOJ's request for the information, after either VA or DOJ determines that such information is relevant to DOJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that release of the records to the DOJ is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its own initiative, may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records.

69. Disclosure of relevant information may be made to individuals, organizations, public or private agencies, or other entities with whom VA has a contract or agreement or where there is a subcontract to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor or subcontractor to perform the services of the contract or agreement.

70. Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud, waste, overpayment, or abuse by individuals in their operations and programs as well as identifying areas where legislative and regulatory amendments directed toward preventing overpayments. These records may also be disclosed as part of an ongoing computer-matching program to accomplish this purpose.

71. VA may on its own initiative, disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) VA has determined that as a result of the suspected or confirmed compromise, there is a risk of embarrassment or harm to the reputations of the record subjects, harm to the economic or property interests, identity theft or fraud, or harm to the programs (whether maintained by VA or another agency or entity) that rely upon the potentially compromised information; and (3) the disclosure is to agencies, entities, or persons whom VA determines are reasonably necessary to assist or carry out the VA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm. This routine use permits disclosures by VA to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision of credit protection services as provided in title 38 U.S.C. 5724, as the terms are defined in title 38 U.S.C. 5727.

72. VA may disclose information to other Federal Agencies including, but not limited to, identifying information, payment information, and vocational objectives about a Veteran or Servicemember who is receiving or has received benefits under the Vocational Rehabilitation program to be used in data analysis and development of performance measures.

73. Any information contained in this system may be disclosed by VA, as

deemed necessary, to DoD for use for determinations required by DoD. VA will routinely use the information to conduct medical evaluations needed to produce VA disability ratings and to promulgate subsequent claims for benefits under title 38 U.S.C.

74. Information in this system (excluding date of birth, social security number, and address) relating to the use of transferred educational assistance benefits may be coequally disclosed to the transferor, *e.g.,* the individual from whom eligibility was derived, and to each transferee, *e.g.,* the individual receiving the transferred benefit. The information disclosed is limited to the two parties in each transferor-transferee relationship, as the transferor may have multiple transferred relationships.

75. The name, address, insurance account information of an insured Veteran or member of the uniformed services, their beneficiary(ies), legal representatives, or designated payee(s), and the amount of payment may be disclosed to the Treasury Department, upon its official request, in order for the Treasury Department to make payment of dividends, policy loans, cash surrenders, maturing endowments, insurance refunds, issue checks and perform check tracer activities for the veteran or member of the uniformed services, beneficiary(ies), legal representative or designated payee(s).

76. The name and address of an insured Veteran or member of the uniformed services, date and amount of payments made to VA, including specific status of each policy (*e.g.,* premiums paid in, dividends paid out, cash and loan values) may be disclosed to the Internal Revenue Service (IRS), upon its official request, in order for the IRS to collect tax liens by withholding insurance payments to satisfy unpaid taxes. This purpose is consistent with title 26 of the United States Code, § 7602.

77. The name, address, social security number, date of discharge from the military, medical information concerning the grounds for total disability or the nature of an injury or illness, and dependency or beneficiary related information of a member of the uniformed services or Veteran may be disclosed to the Office of Servicemembers' Group Life Insurance (OSGLI) at the request of a member of the uniformed services or Veteran in order to aid OSGLI in the verification of such information for the purpose of issuance and maintenance of insurance policies provided to members of the uniformed services or Veterans participating in the Servicemembers' Group Life Insurance (SGLI) program and/or Veterans' Group Life Insurance (VGLI) program and to pay insurance benefits under these programs.

78. The name, address, and other identifying information such as a social security number or a military service number may be disclosed to the Department of Defense (Army, Air Force, Navy, Marine Corps); the Coast Guard of the Department of Homeland Security; the Commissioned Officers Corps of the U.S. Public Health Service; and the Commissioned Officers Corps of the National Oceanic and Atmospheric Administration (NOAA) of the Department of Commerce; this disclosure may be made upon their official request, for use in order for these departments to establish and maintain allotments from active and retired service pay for VA insurance premiums and loan repayments.

79. The face amount and cash and/or loan value of an insurance policy, verification of an existing insurance policy, and the name and address of an insured Veteran or member of the uniformed services may be disclosed at the request of the veteran or member of the uniformed services to a Federal, State, or local agency, in order for these agencies to assist a veteran or member of the uniformed services applying for Medicaid, Medicare, nursing home admittance, welfare benefits, or other benefits provided by the requesting agency to the extent that the information is relevant and necessary to the agency's decision regarding benefits.

80. The name and address of a Veteran or member of the uniformed services and military service information (*e.g.,* dates of service, branch of service) may be disclosed to the Armed Forces Institute of Pathology (AFIP), upon its official request, in order for the AFIP to conduct research for specified official purposes.

81. Any information in this system such as notice of renewal, reinstatement, premium due, lapse actions, miscellaneous insurance instructions, disposition of dividends, policy loans, and transfer of records may be disclosed to VA fiduciaries, court-appointed guardians/conservators, powers of attorney, or military trustees of incompetent Veterans or members of the uniformed services in order to advise VA fiduciaries, court-appointed guardians/conservators, powers of attorney, or military trustees of current actions to be taken in connection with ownership of U.S. government life insurance policies and to enable them to properly perform their duties as fiduciaries or guardians, powers of attorney, or military trustees.

82. Any information in this system of records may be disclosed, in the course of presenting evidence in or to a court, magistrate, administrative tribunal, or grand jury, including disclosures to opposing counsel in the course of such proceedings or in settlement negotiations.

83. Identifying information, except for the name and address of a Veteran or member of the uniformed services, may be disclosed to a Federal, State, County or Municipal agency for the purpose of conducting computer matches to obtain information to validate the entitlement of a Veteran or member of the uniformed services who is receiving or has received government insurance benefits under title 38 U.S.C. The name and address of a Veteran or member of the uniformed services may also be disclosed to a Federal agency under this routine use if they are required by the Federal agency to respond to the VA inquiry.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

The BDN, Virtual VA, Corporate WINRS, VETSNET, The Image Management System (TIMS), Long Term Solution (LTS) and the VBMS are data telecommunication terminal systems. For Compensation and Pension-related claims, records (or information contained in records) are no longer maintained on paper documents in claims folders (C-folders), but are now 100% digitized and stored in the VBMS electronic folder (VBMS eFolder). In 2012, VA declared the VBMS eFolder to be the *official record* for all documentation submitted to VA pursuant to claims for Compensation and Pension benefits. All paper documents VA receives pursuant to a Compensation or Pension claim are converted to a digital image via VA's electronic imaging process and uploaded into the VBMS eFolder. An electronically-imaged document in the VBMS eFolder is the *official copy of record* for adjudicating claims for VA Compensation or Pension benefits. When VA decision makers adjudicate claims for Compensation or Pension benefits, they rely solely on the electronic image contained in the VBMS eFolder, irrespective of whether a document is initially submitted to VA in electronic or paper format. VA decision makers do not have access to the original paper source documents during the claims adjudication process. Once a paper source document is electronically imaged and uploaded into the eFolder, VA considers the electronic image to be the *official copy of record,* while the physical paper document is reclassified

as a *duplicate copy.* All *duplicate copies* of the official record are subject to destruction in accordance with applicable procedures and laws (please see the Retention and Disposal section for further details.)

Vocational Rehabilitation and Employment (VR&E), and Education claims are maintained on paper and electronic folders and on automated storage media (*e.g.,* microfilm, microfiche, magnetic tape and disks). Such information may be accessed through BDN, VBMS, Corporate WINRS, TIMS, LTS, and VETSNET terminals. BDN, Virtual VA, Corporate WINRS, VETSNET, and VBMS terminal locations include VA Central Office, regional offices, VA health care facilities, Veterans Integrated Service Network offices, DoD Finance and Accounting Service Centers and the U.S. Coast Guard Pay and Personnel Center. Remote on-line access is also made available to authorized remote sites, representatives of claimants and to attorneys of record for claimants. A VA claimant must execute a prior written consent or a power of attorney authorizing access to his or her claims records before VA will allow the representative or attorney to have access to the claimant's automated claims records. Access by representatives and attorneys of record is to be used solely for the purpose of assisting an individual claimant whose records are accessed in a claim for benefits administered by VA. Information relating to receivable accounts owed to VA, designated the Centralized Accounts Receivable System (CARS), is maintained on magnetic tape, microfiche and microfilm. CARS is accessed through a data telecommunications terminal system at St. Paul, Minnesota.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

File folders, whether paper or electronic, are indexed by name of the individual and VA file number. Automated records are indexed by name, VA file number, payee name and type of benefit. Employee productivity is measured using automated systems. At the conclusion of a monthly reporting period, the generated listing is indexed by employee BDN identification number. Records in CAIVRS may only be retrieved by social security number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

All claims files folders for Compensation and Pension claims are electronically imaged and uploaded into the VBMS eFolder. Once a file is electronically imaged and established by VA as the official record, its paper contents (with the exception of documents that are on hold due to pending litigation, and service treatment records and other documents that are the property of DoD), are reclassified as *duplicate—non record keeping—copies* of the official record, and will be destroyed in accordance with Records Control Schedule VB–1, Part 1 Section XIII, Item 13–052.100 as authorized by NARA. All paper documentation that is not the property of VA (*e.g.,* DoD-owned documentation) is currently stored by VA after scanning, pending a policy determination as to its final disposition. All documentation being held pursuant to active litigation is held in its native format during the pendency of the litigation. All VBMS eFolders are stored on a secure VA server, pending permanent transfer to NARA where they will be maintained as historical records.

Prior to destruction of any paper source documentation reclassified as *duplicate copies,* VA engages in a comprehensive and multi-layered quality control and validation program to ensure material that has been electronically imaged is completely and accurately uploaded into the VBMS eFolder. To guarantee the integrity and completeness of the record, VA engages in industry-best practices, using state-of-the-art equipment, random sampling, independent audit, and 100% VA review throughout the claims adjudication process. Historically, VA's success rate in ensuring the accuracy and completeness of the electronic record routinely and consistently exceeds 99%. Furthermore, no paper document is ever destroyed while any related claim or appeal for VA benefits is still pending. VA waits 3 years after the final adjudication of any claim or appeal before destroying the paper duplicate copies that have been scanned into the VBMS eFolder. As noted, the electronic image of the paper document is retained indefinitely as a permanent record either by VA or NARA.

Decisions to destroy VR&E paper counseling records are to be made in accordance with Records Control Schedule (RCS), RCS VB–1, Part I, Field in Section VII, dated January 31, 2014. Automated storage media containing temporary working information are retained until a claim is decided, and then destroyed. All other automated storage media are retained and disposed of in accordance with disposition authorization approved by NARA. Education file folders in paper are retained at the servicing Regional Processing Office. Education paper folders may be destroyed in accordance with the times set forth in the VBA Records Management, Records Control Schedule VB–1, Part 1, Section VII, as authorized by NARA.

Employee productivity records are maintained for two years after which they are destroyed by shredding or burning. File information for CAIVRS is provided to HUD by VA on magnetic tape. After information from the tapes has been read into the computer the tapes are returned to VA for updating. HUD does not keep separate copies of the tapes.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

1. Physical Security:

(a) Access to working spaces and claims folder file storage areas in VA regional offices and centers is restricted to VA employees on a need-to-know basis. Generally, file areas are locked after normal duty hours and the offices and centers are protected from outside access by the Federal Protective Service or other security personnel. Employee claims file records and claims file records of public figures are stored in separate locked files. Strict control measures are enforced to ensure that access to and disclosure from these claims file records are limited to a need-to-know basis. Duplicate paper copies after imaging are stored in NARA-compliant facilities, pending destruction.

(b) Access to BDN, Virtual VA, Corporate WINRS, VETSNET and VBMS data telecommunication networks are by authorization controlled by the site security officer who is responsible for authorizing access to the BDN, Virtual VA, VBMS and VETSNET by a claimant's representative or attorney approved for access in accordance with VA regulations. The site security officer is responsible for ensuring that the hardware, software and security practices of a representative or attorney satisfy VA security requirements before granting access. The security requirements applicable to the access of automated claims files by VA employees also apply to the access of automated claims files by claimants' representatives or attorneys. The security officer is assigned responsibility for privacy-security measures, especially for review of violation logs, information logs and control of password distribution, including password distribution for claimants' representatives.

(c) Access to data processing centers is generally restricted to center employees, custodial personnel, Federal Protective Service and other security

personnel. Access to computer rooms is restricted to authorized operational personnel through electronic locking devices. All other persons provided access to computer rooms are escorted.

(d) Employee production records are identified by the confidential BDN and VETSNET employee identification number, and are protected by management/supervisory personnel from unauthorized disclosure in the same manner as other confidential records maintained by supervisors.

2. BDN, Virtual VA, VETSNET, and VBMS System Security:

(a) Usage of the BDN, Virtual VA, Corporate WINRS, VETSNET, and VBMS systems is protected by the usage of ''login'' identification passwords and authorized function passwords. The passwords are changed periodically. These same protections apply to remote access users.

(b) At the data processing centers, identification of magnetic tapes and disks containing data is rigidly enforced using labeling techniques. Automated storage media, which are not in use, are stored in tape libraries, which are secured in locked rooms. Access to programs is controlled at three levels: Programming, auditing and operations. Access to the data processing centers where HUD maintains CAIVRS is generally restricted to center employees and authorized subcontractors. Access to computer rooms is restricted to center employees and authorized operational personnel through electronic locking devices. All other persons granted access to computer rooms are escorted. Files in CAIVRS use social security numbers as identifiers. Access to information files is restricted to authorized employees of participating agencies and authorized employees of lenders who participate in the agencies' programs. Access is controlled by agency distribution of passwords. Information in the system may be accessed by use of a touch-tone telephone by authorized agency and lender employees on a ''need-to-know'' basis.

Record Access Procedures: Veterans and authorized parties have a statutory right to request a copy of or an amendment to a record in VA's possession at any time under the Freedom of Information Act (FOIA) and the Privacy Act (PA). VA has a decentralized system for fulfilling FOIA and PA requests. The type of information or records an individual is seeking will determine the location to which a request should be submitted. For records contained within a VA claims folder (Compensation and Pension claims), or military service medical records in VA's possession, the request will be fulfilled by the VA Records Management Center. Authorized requestors should mail or fax their Privacy Act or FOIA requests to: Department of Veterans Affairs, Claims Intake Center, P.O. Box 4444, Janesville, WI 53547–4444, Fax: 844–531–7818, DID: 608–373–6690.

For other benefits records maintained by VA (to include Vocational Rehabilitation & Employment, Insurance, Loan Guaranty or Education Service) submit requests to the FOIA/Privacy Act Officer at the VA Regional Office serving the individual's jurisdiction. Address locations for the nearest VA Regional Office are listed at *VA* Locations Link. Any individuals who have questions about access to records may also call 1–800–327–1000.

CONTESTING RECORD PROCEDURES:

(See Record access procedures above.)

Notification Procedures: Any individual, who wishes to determine whether a record is being maintained in this system under his or her name or other personal identifier, or wants to determine the contents of such record, should submit a written request or apply in person to the nearest VA regional office or center. Address locations are listed at *https://www.va.gov/landing2_locations.htm.*

VA employees wishing to inquire whether the system of records contains employee productivity information about themselves should contact their supervisor at the regional office or center of employment.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

There is no category of records in this system that has been identified as exempt from any section of the Privacy Act.

HISTORY:

Compensation, Pension, Education, and Vocational Rehabilitation and Employment Records-VA (58VA21/22/28) was published on July 19, 2012 at 77FR42594.

[FR Doc. 2019–02315 Filed 2–13–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0060]

Agency Information Collection Activity: Claim for One Sum Payment Government Life Insurance and Claim for Monthly Payments Government Life Insurance

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to process the beneficiaries claim for payment of Life Insurance Policy insurance proceeds. The information on the form is required by law, 38 CFR 6.48 and 8.36.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before April 15, 2019.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administrations (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0060'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Danny S. Green at (202) 421–1354.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the

information will have practical utility; (2) the accuracy of VBA'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 respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: Public Law 104–13; 44 U.S.C. 3501–3521.

Title: Claim for One Sum Payment Government Life Insurance (VA Form 29–4125). Claim for Monthly Payments Government Life Insurance (VA Form 29–4125a).

OMB Control Number: 2900–0060.

Type of Review: Revision of a currently approved collection.

Abstract: These forms are used by beneficiaries applying for proceeds of Government Life Insurance policies. The information requested on the forms is required by law, 38 U.S.C. Sections 1917 and 1952.

Affected Public: Individuals and households.

Estimated Annual Burden: 12,010 hours.

Estimated Average Burden per Respondent: 6 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 120,100.

By direction of the Secretary:

Danny S. Green,

Interim VA Clearance Officer, Office of Quality, Performance and Risk, Department of Veterans Affairs.

[FR Doc. 2019–02238 Filed 2–13–19; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0016]

Agency Information Collection Activity Under OMB Review: Claim for Disability Insurance Benefits, Government Life Insurance

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 18, 2019.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov*, or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St NW, Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0016'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Danny S. Green, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 421–1354 or email *Danny.Green2@va.gov.* Please refer to ''OMB Control No. 2900–0016'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 44 U.S.C. 3501–21.

Title: Claim for Disability Insurance Benefits, Government Life Insurance (VA Form 29–357).

OMB Control Number: 2900–0016.

Type of Review: Reinstatement.

Abstract: VA Forms 29–357 is used by the policyholder to claim disability insurance benefits on S–DVI, NSLI and USGLI policies. The information requested is authorized by law, 38 U.S.C. 1912, 1915, 1922, 1942 and 1948.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 83 FR 12328 on June 8, 2018, page 26748.

Affected Public: Individuals or Households.

Estimated Annual Burden: 14,175.

Estimated Average Burden per Respondent: 1 Hour and 45 minutes.

Frequency of Response: Once.

Estimated Number of Respondents: 8,100.

By direction of the Secretary:

Danny S. Green,

Interim VA Clearance Officer, Office of Quality, Performance and Risk, Department of Veterans Affairs.

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Part II

Department of Defense

Department of the Army, Corps of Engineers

Environmental Protection Agency

33 CFR Part 328

40 CFR Parts 110, 112, 116, et al.

Revised Definition of ''Waters of the United States''; Proposed Rules

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 328

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 110, 112, 116, 117, 122, 230, 232, 300, 302, and 401

[EPA–HQ–OW–2018–0149; FRL–9988–15–OW]

RIN 2040–AF75

Revised Definition of ''Waters of the United States''

AGENCY: Department of the Army, Corps of Engineers, Department of Defense; and Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency and the Department of the Army (''the agencies'') are publishing for public comment a proposed rule defining the scope of waters federally regulated under the Clean Water Act (CWA). This proposal is the second step in a comprehensive, two-step process intended to review and revise the definition of ''waters of the United States'' consistent with the Executive Order signed on February 28, 2017, ''Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the 'Waters of the United States' Rule.'' This proposed rule is intended to increase CWA program predictability and consistency by increasing clarity as to the scope of ''waters of the United States'' federally regulated under the Act. This proposed definition revision is also intended to clearly implement the overall objective of the CWA to restore and maintain the quality of the nation's waters while respecting State and tribal authority over their own land and water resources.

DATES: Comments must be received on or before April 15, 2019.

ADDRESSES: You may submit comments, identified by Docket ID No. EPA–HQ–OW–2018–0149, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov/* (our preferred method). Follow the online instructions for submitting comments.
- *Email: OW-Docket@epa.gov.* Include Docket ID No. EPA–HQ–OW–2018–0149 in the subject line of the message.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Office of Water Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand Delivery/Courier:* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m.–4:30 p.m., Monday–Friday (except Federal Holidays).

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''How should I submit comments?'' heading of the GENERAL INFORMATION section of this document.

FOR FURTHER INFORMATION CONTACT: Michael McDavit, Oceans, Wetlands, and Communities Division, Office of Water (4504–T), Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: (202) 566–2428; email address: *CWAwotus@epa.gov;* or Jennifer A. Moyer, Regulatory Community of Practice (CECW–CO–R), U.S. Army Corps of Engineers, 441 G Street NW, Washington, DC 20314; telephone number: (202) 761–5903; email address: *USACE_CWA_Rule@usace.army.mil.*

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I. General Information

A. How can I get copies of this document and related information?

1. *Docket.* An official public docket for this action has been established under Docket ID No. EPA–HQ–OW–2018–0149. The official public docket consists of the documents specifically referenced in this action, and other information related to this action. The official public docket is the collection of materials that is available for public viewing at the OW Docket, EPA West, Room 3334, 1301 Constitution Ave. NW, Washington, DC 20004. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The OW Docket telephone number is 202–566–2426. A reasonable fee will be charged for copies.

2. *Electronic Access.* You may access this **Federal Register** document electronically under the **Federal Register** listings at *http://www.regulations.gov.* An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You

may access EPA Dockets at *http://www.regulations.gov* to view public comments as they are submitted and posted, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *https://www.epa.gov/dockets*. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the Docket Facility.

B. Under what legal authority is this proposed rule issued?

The authority for this action is the Federal Water Pollution Control Act, 33 U.S.C. 1251 *et seq.,* including sections 301, 304, 311, 401, 402, 404, and 501.

C. How should I submit comments?

Throughout this notice, the agencies solicit comment on a number of issues related to the proposed rulemaking. Submit your comments, identified by Docket ID No. EPA–HQ–OW–2018–0149, at *https://www.regulations.gov* (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

This rule is the outgrowth of other rulemakings and extensive outreach efforts, including requests for recommendations and comments, and the agencies have taken recommendations and comments received into account in developing this proposal. In developing a final rule, the agencies will be considering comments submitted on this proposal. Persons who wish to provide views or recommendations on this proposal must provide comments to the agencies as part of this comment process. To facilitate the processing of comments, commenters are encouraged to organize their comments in a manner that corresponds to the outline of this proposal.

II. Background

A. Executive Summary

The U.S. Environmental Protection Agency (EPA) and the U.S. Department of the Army (Army) (together, the agencies) are publishing for public comment a proposed rule defining the scope of waters subject to federal regulation under the Clean Water Act (CWA), in light of the U.S. Supreme Court cases in *United States* v. *Riverside Bayview Homes* (*Riverside Bayview*), *Solid Waste Agency of Northern Cook County* v. *United States* (*SWANCC*), and *Rapanos* v. *United States* (*Rapanos*), and consistent with Executive Order 13778, signed on February 28, 2017, entitled ''Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the 'Waters of the United States' Rule.''

The agencies propose to interpret the term ''waters of the United States'' to encompass: Traditional navigable waters, including the territorial seas; tributaries that contribute perennial or intermittent flow to such waters; certain ditches; certain lakes and ponds; impoundments of otherwise jurisdictional waters; and wetlands adjacent to other jurisdictional waters.

The agencies propose as a baseline concept that ''waters of the United States'' are waters within the ordinary meaning of the term, such as oceans, rivers, streams, lakes, ponds, and wetlands, and that not all waters are ''waters of the United States.'' Under this proposed rule, a tributary is defined as a river, stream, or similar naturally occurring surface water channel that contributes perennial or intermittent flow to a traditional navigable water or territorial sea in a typical year either directly or indirectly through other tributaries, jurisdictional ditches, jurisdictional lakes and ponds, jurisdictional impoundments, and adjacent wetlands or through water features identified in paragraph (b) of this proposal so long as those water features convey perennial or intermittent flow downstream. A tributary does not lose its status if it flows through a culvert, dam, or other similar artificial break or through a debris pile, boulder field, or similar natural break so long as the artificial or natural break conveys perennial or intermittent flow to a tributary or other jurisdictional water at the downstream end of the break. Ditches are generally proposed not to be ''waters of the United States'' unless they meet certain criteria, such as functioning as traditional navigable waters, if they are constructed in a tributary and also satisfy the conditions of the proposed ''tributary'' definition, or if they are constructed in an adjacent wetland and also satisfy the conditions of the proposed ''tributary'' definition.

The proposal defines ''adjacent wetlands'' as wetlands that abut or have a direct hydrological surface connection to other ''waters of the United States'' in a typical year. ''Abut'' is proposed to mean when a wetland touches an otherwise jurisdictional water at either a point or side. A ''direct hydrologic surface connection'' as proposed occurs as a result of inundation from a jurisdictional water to a wetland or via perennial or intermittent flow between a wetland and jurisdictional water. Wetlands physically separated from other waters of the United States by upland or by dikes, barriers, or similar structures and also lacking a direct hydrologic surface connection to such waters are not adjacent under this proposal.

The proposal would exclude from the definition of ''waters of the United States'' waters or water features not mentioned above. The proposed definition specifically clarifies that ''waters of the United States'' do not include features that flow only in response to precipitation; groundwater, including groundwater drained through subsurface drainage systems; certain ditches; prior converted cropland; artificially irrigated areas that would revert to upland if artificial irrigation ceases; certain artificial lakes and ponds constructed in upland; water-filled depressions created in upland incidental to mining or construction activity; stormwater control features excavated or constructed in upland to convey, treat, infiltrate, or store stormwater run-off; wastewater recycling structures constructed in upland; and waste treatment systems. In addition, the agencies are proposing to clarify and define the terms ''prior converted cropland'' and ''waste treatment system'' to improve regulatory predictability and clarity.

In response to the interest expressed by some States in participating in the federal jurisdictional determination process, the agencies are soliciting comment as to how they could establish an approach to authorize States, Tribes, and Federal agencies to establish

geospatial datasets of ''waters of the United States,'' as well as waters that the agencies propose to exclude, within their respective borders for approval by the agencies. Under a separate action, the agencies may propose creating a framework under which States, Tribes, and Federal agencies could choose to develop datasets for approval for all, some, or none of the ''waters of the United States'' within their boundaries. If the agencies were to pursue such an action, they would do so in coordination with other Federal agencies, State, tribal, and interested stakeholders. This approach would not require State and tribal governments to establish these datasets; it would simply make this process available to those government agencies that would find it useful.

The fundamental basis used by the agencies for the revised definition proposed today is the text and structure of the CWA, as informed by its legislative history and Supreme Court precedent, taking into account agency policy choices and other relevant factors. This proposed definition revision is intended to strike a balance between Federal and State waters and would carry out Congress' overall objective to restore and maintain the integrity of the nation's waters in a manner that preserves the traditional sovereignty of States over their own land and water resources. The agencies believe the proposed definition would also ensure clarity and predictability for Federal agencies, States, Tribes, the regulated community, and the public. This proposed rule is intended to ensure that the agencies are operating within the scope of the Federal government's authority over navigable waters under the CWA and the Commerce Clause of the U.S. Constitution.

B. The Clean Water Act and Regulatory Definition of ''Waters of the United States''

1. The Clean Water Act

Congress amended the Federal Water Pollution Control Act (FWPCA), or Clean Water Act (CWA) as it is commonly called,[1] in 1972 to address longstanding concerns regarding the quality of the nation's waters and the federal government's ability to address those concerns under existing law. Prior to 1972, the ability to control and redress water pollution in the nation's waters largely fell to the U.S. Army Corps of Engineers (Corps) under the Rivers and Harbors Act of 1899 (RHA). While much of that statute focused on restricting obstructions to navigation on the nation's major waterways, section 13 of the RHA made it unlawful to discharge refuse ''into any navigable water of the United States,[2] or into any tributary of any navigable water from which the same shall float or be washed into such navigable water.'' 33 U.S.C. 407. Congress had also enacted the Water Pollution Control Act of 1948, Public Law 80–845, 62 Stat. 1155 (June 30, 1948), to address interstate water pollution, and subsequently amended that statute in 1956 (giving the statute its current formal name), 1961, and 1965. The early versions of the CWA promoted the development of pollution abatement programs, required States to develop water quality standards, and authorized the Federal government to bring enforcement actions to abate water pollution.

These early statutory efforts, however, proved inadequate to address the decline in the quality of the nation's waters, *see City of Milwaukee* v. *Illinois,* 451 U.S. 304, 310 (1981), so Congress performed a ''total restructuring'' and ''complete rewriting'' of the existing statutory framework in 1972, *id.* at 317 (quoting legislative history of 1972 amendments). That restructuring resulted in the enactment of a comprehensive scheme (including voluntary as well as regulatory programs) designed to prevent, reduce, and eliminate pollution in the nation's waters generally, and to regulate the discharge of pollutants into navigable waters specifically. *See, e.g., S.D. Warren Co.* v. *Maine Bd. of Environmental Protection,* 547 U.S. 370, 385 (2006) (noting that ''the Act does not stop at controlling the 'addition of pollutants,' but deals with 'pollution' generally'').

The objective of the new statutory scheme was ''to restore and maintain the chemical, physical, and biological integrity of the Nation's waters.'' 33 U.S.C. 1251(a). In order to meet that objective, Congress declared two national goals: (1) ''that the discharge of pollutants into the navigable waters be eliminated by 1985;'' and (2) ''that wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water be achieved by July 1, 1983 . . . .'' *Id.* at 1251(a)(1)–(2).

Congress also established several key policies that direct the work of the agencies to effectuate those goals. For example, Congress declared as a national policy ''that the discharge of toxic pollutants in toxic amounts be prohibited; . . . . that Federal financial assistance be provided to construct publicly owned waste treatment works; . . . . that areawide waste treatment management planning processes be developed and implemented to assure adequate control of sources of pollutants in each State; . . . [and] that programs for the control of nonpoint sources of pollution be developed and implemented in an expeditious manner so as to enable the goals of this Act to be met through the control of both point and nonpoint sources of pollution.'' *Id.* at 1251(a)(3)–(7).

Congress provided a major role for the States in implementing the CWA, balancing the traditional power of States to regulate land and water resources within their borders with the need for a national water quality regulation. For example, the statute highlighted ''the policy of the Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce and eliminate pollution'' and ''to plan the development and use . . . . of land and water resources . . . . .'' *Id.* at 1251(b). Congress also declared as a national policy that States manage the major construction grant program and implement the core permitting programs authorized by the statute, among other responsibilities. *Id.* Congress added that ''[e]xcept as expressly provided in this Act, nothing in this Act shall . . . . be construed as impairing or in any manner affecting any right or jurisdiction of the States with respect to the waters (including boundary waters) of such States.'' *Id.* at 1370.[3] Congress pledged to provide technical support and financial aid to the States ''in connection with the prevention, reduction, and elimination of pollution.'' *Id.* at 1251(b).

To carry out these policies, Congress broadly defined ''pollution'' to mean ''the man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of

[1] The FWCPA is commonly referred to as the CWA following the 1977 amendments to the FWPCA. Public Law 95–217, 91 Stat. 1566 (1977). For ease of reference, the agencies will generally refer to the FWPCA in this notice as the CWA or the Act.

[2] The term ''navigable water of the United States'' is a term of art used to refer to waters subject to federal jurisdiction under the RHA. *See, e.g.,* 33 CFR 329.1. The term is not synonymous with the phrase ''waters of the United States'' under the CWA, *see id.,* and the general term ''navigable waters'' has different meanings depending on the context of the statute in which it is used. *See, e.g., PPL Montana, LLC* v. *Montana,* 132 S. Ct. 1215, 1228 (2012).

[3] 33 U.S.C. 1370 also prohibits authorized States from adopting any limitations, prohibitions, or standards that are less stringent than required by the CWA.

water,'' *id.* at 1362(19), to parallel the broad objective of the Act ''to restore and maintain the chemical, physical, and biological integrity of the Nation's waters.'' *Id.* at 1251(a). Congress then crafted a non-regulatory statutory framework to provide technical and financial assistance to the States to prevent, reduce, and eliminate pollution in the nation's waters generally. For example, section 105 of the Act, ''Grants for research and development,'' authorized EPA ''to make grants to any State, municipality, or intermunicipal or interstate agency for the purpose of assisting in the development of any project which will demonstrate a new or improved method of preventing, reducing, and eliminating the discharge into *any waters* of pollutants from sewers which carry storm water or both storm water and pollutants.'' 33 U.S.C. 1255(a)(1) (emphasis added). Section 105 also authorized EPA ''to make grants to any State or States or interstate agency to demonstrate, in *river basins or portions thereof,* advanced treatment and environmental enhancement techniques to control pollution from all sources . . . . including nonpoint sources, ... [and] . . . . to carry out the purposes of section 301 of this Act . . . . for research and demonstration projects for prevention of pollution of *any waters* by industry including, but not limited to, the prevention, reduction, and elimination of the discharge of pollutants.'' 33 U.S.C. 1255(b)–(c) (emphasis added); *see also id.* at 1256(a) (authorizing EPA to issue ''grants to States and to interstate agencies to assist them in administering programs for the prevention, reduction, and elimination of pollution''). Section 108, ''Pollution Control in Great Lakes,'' authorized EPA to enter into agreements with any State to develop plans for the ''elimination or control of pollution, *within all or any part of the watersheds* of the Great Lakes.'' *Id.* at 1258(a) (emphasis added); *see also id.* at 1268(a)(3)(C) (defining the ''Great Lakes System'' as ''*all* the streams, rivers, lakes and other bodies of water within the drainage basin of the Great Lakes'') (emphasis added). Similar broad pollution control programs were created for other major watersheds, including, for example, the Chesapeake Bay, *see id.* at 1267(a)(3), Long Island Sound, *see id.* at 1269(c)(2)(D), and Lake Champlain, *see id.* at 1270(g)(2).

In addition to the Act's non-regulatory measures to control pollution of the nation's waters generally, Congress created a federal regulatory permitting program designed to address the discharge of pollutants into a subset of those waters identified as ''navigable waters'' or ''the waters of the United States,'' *id.* at 1362(7). Section 301 contains the key regulatory mechanism: ''Except as in compliance with this section and sections 302, 306, 307, 318, 402, and 404 of this Act, the discharge of any pollutant by any person shall be unlawful.'' *Id.* at 1311(a). A ''discharge of a pollutant'' is defined to include ''any addition of any pollutant to navigable waters from any point source,'' such as a pipe, ditch or other ''discernible, confined and discrete conveyance.'' *Id.* at 1362(12), (14). The term ''pollutant'' means ''dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.'' *Id.* at 1362(6). Thus, it is unlawful to discharge pollutants into the waters of the United States from a point source unless the discharge is in compliance with certain enumerated sections of the CWA, including obtaining authorization pursuant to the section 402 National Pollutant Discharge Elimination System (NPDES) permit program or the section 404 dredged or fill material permit program. *See id.* at 1342 and 1344. Congress therefore hoped to achieve the Act's objective ''to restore and maintain the chemical, physical, and biological integrity of the Nation's waters'' by addressing pollution of all waters via non-regulatory means and federally regulating the discharge of pollutants to the subset of waters identified as ''navigable waters.''[4]

Under this statutory scheme, the States are primarily responsible for developing water quality standards for ''waters of the United States'' within their borders and reporting on the condition of those waters to EPA every two years. *Id.* at 1313, 1315. States must develop total maximum daily loads (TMDLs) for waters that are not meeting established water quality standards and must submit those TMDLs to EPA for approval. *Id.* at 1313(d). States also have authority to issue water quality certifications or waive certification for every federal permit or license issued within their borders that may result in a discharge to navigable waters. *Id.* at 1341.

These same regulatory authorities can be assumed by Indian tribes under section 518 of the CWA, which authorizes EPA to treat eligible Indian tribes with reservations in a manner similar to States for a variety of purposes, including administering each of the principal CWA regulatory programs. *Id.* at 1377(e). In addition, States and Tribes retain authority to protect and manage the use of those waters that are not navigable waters under the CWA. *See, e.g., id.* at 1251(b), 1251(g), 1370, 1377(a). At this time, forty-seven states administer portions of the CWA section 402 permit program for those ''waters of the United States'' within their boundaries,[5] and two states (Michigan and New Jersey) administer the section 404 permit program. At present, no Tribes administer the section 402 or 404 programs, although some are exploring the possibility. For additional information regarding State and tribal programs, *see* the Technical Support Document.

2. Regulatory History

In May 1973, the EPA issued its first set of regulations to implement the new NPDES permit program established in the 1972 CWA amendments. Those regulations defined the phrase ''navigable waters'' as:

- All navigable waters of the United States;
- Tributaries of navigable waters of the United States;
- Interstate waters;
- Intrastate lakes, rivers, and streams which are utilized by interstate travelers for recreational or other purposes;
- Intrastate lakes, rivers, and streams from which fish or shellfish are taken and sold in interstate commerce; and
- Intrastate lakes, rivers, and streams which are utilized for industrial purposes by industries in interstate commerce.

38 FR 13528, 13529 (May 22, 1973) (codified at 40 CFR 125.1 (1973)).

[4] Members of Congress were aware when they drafted the 1972 CWA amendments that different types of the Nation's waters would be subject to different degrees of federal control. For instance, in House Debate regarding a proposed and ultimately failed amendment to prohibit the discharge of pollutants to ground waters in addition to navigable waters, Representative Don H. Clausen stated, ''Mr. Chairman, in the early deliberations within the committee which resulted in the introduction of H.R. 11896, a provision for ground waters . . . . was thoroughly reviewed and it was determined by the committee that there was not sufficient information on ground waters to justify the types of controls that are required for navigable waters. I refer the gentleman to the objectives of this act as stated in section 101(a). The objective of this act is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. I call your attention to the fact that this does not say the Nation's 'navigable waters,' 'interstate waters,' or 'intrastate waters.' It just says 'waters.' This includes ground waters.'' 118 Cong. Rec. at 10,667 (daily ed. March 28, 1972).

[5] Three states (Massachusetts, New Hampshire, and New Mexico) do not currently administer any part of the CWA section 402 program.

In 1974, the Corps issued its first set of regulations defining ''waters of the United States'' for the purpose of implementing section 404 of the CWA, as well as sections 9, 10, 11, 13, and 14 of the RHA, that reaffirmed the Corps' view that its dredged and fill jurisdiction under section 404 was the same as its traditional jurisdiction under the RHA. *See* 39 FR 12115, 12119 (Apr. 3, 1974) (codified at 33 CFR 209.12033). Specifically, the Corps defined ''the waters of the United States'' as waters that ''are subject to the ebb and flow of the tide, and/or are presently, or have been in the past, or may be in the future susceptible for use for purposes of interstate or foreign commerce.'' 39 FR 12119.

Environmental organizations challenged the Corps' 1974 regulation in the District Court for the District of Columbia based on the concern that the Corps' definition of ''navigable waters'' did not include tributaries or coastal marshes above the mean high tide mark or wetlands above the ordinary high water mark. The District Court held that the term ''navigable waters'' is not limited to the traditional tests of navigability and ordered the Corps to revoke its definition and publish a new one ''clearly recognizing the full regulatory mandate of the Water Act.'' *Natural Resources Defense Council, Inc.* v. *Callaway,* 392 F. Supp. 685 (D.D.C. 1975).

In response to this decision, the Corps issued interim regulations in 1975 that defined the term ''navigable waters'' to include periodically inundated coastal wetlands contiguous with or adjacent to navigable waters, periodically inundated freshwater wetlands contiguous with or adjacent to navigable waters, and, like EPA's 1973 regulations, certain intrastate waters based on non-transportation impacts on interstate commerce. The Corps revised the definition in 1977 to encompass traditional navigable waters, tributaries to navigable waters, interstate waters, adjacent wetlands to those categories of waters, and ''[a]ll other waters'' the ''degradation or destruction of which could affect interstate commerce.'' 42 FR 37122, 37144 (July 19, 1977).

The EPA and the Corps through the years have maintained separate regulations defining the statutory term ''waters of the United States,'' but the text of the regulations has been virtually identical starting in 1986.[6] In 1986, for example, the Corps consolidated and recodified its regulations to align with clarifications EPA had previously promulgated. *See* 51 FR 41206 (Nov. 13, 1986). While the Corps stated in 1986 that the recodified regulation neither reduced nor expanded jurisdiction, its previous exclusion for ditches was moved from the regulatory text to the final rule preamble. *Id.* at 41216–17. And the Corps added to the preamble what later became known as the ''Migratory Bird Rule,'' which claimed jurisdiction over any water which is or may be used by birds protected by migratory bird treaties or may be used as habitat for birds flying across state lines, and waters which may be used by endangered species, and waters used to irrigate crops sold in interstate commerce. *Id.* at 41217.

The 1986 regulatory text identified the following as ''waters of the United States'':

- All traditional navigable waters,[7] interstate waters, and the territorial seas;
- All impoundments of jurisdictional waters;
- All ''other waters'' such as lakes, ponds, and sloughs the ''use, degradation or destruction of which could affect interstate or foreign commerce'';
- Tributaries of traditional navigable waters, interstate waters, the territorial seas, impoundments, or ''other waters''; and,
- Wetlands adjacent to traditional navigable waters, interstate waters, the territorial seas, impoundments, tributaries, or ''other waters'' (other than waters that are themselves wetlands).

33 CFR 328.3(a)(1)–(7) (1987). The 1986 regulation also excluded ''waste treatment systems'' from the definition of ''waters of the United States.'' *Id.* at 328.3(a)(7), (b) (1987).

On August 25, 1993, the agencies amended the regulatory definition of ''waters of the United States'' to categorically exclude ''prior converted croplands.'' 58 FR 45008, 45031 (Aug. 25, 1993) (''1993 Rule'') (codified at 33 CFR 328.3(b)(2) (1994)). The stated purpose of the amendment was to promote ''consistency among various federal programs affecting wetlands,'' in particular the Food Security Act (FSA) programs implemented by the U.S. Department of Agriculture (USDA) and the CWA programs implemented by the agencies. 58 FR 45033. The agencies did not include a definition of ''prior converted cropland'' in the text of the Code of Federal Regulations but noted in the preamble to the 1993 Rule that the term was defined at that time by the USDA National Food Security Act Manual (NFSAM). The agencies at that time also declined to establish clear rules for when the prior converted cropland designation is no longer applicable. In the preamble to the 1993 Rule, the agencies stated that ''[t]he Corps and EPA will use the [Natural Resources Conservation Service's] provisions on 'abandonment,' thereby ensuring that PC cropland that is abandoned within the meaning of those provisions and which exhibit[s] wetlands characteristics will be considered wetlands subject to Section 404 regulation.'' *Id.* at 45034. The agencies summarized these abandonment provisions by explaining that prior converted cropland which now meets wetland criteria is considered to be abandoned unless: At least once in every five years the area has been used for the production of an agricultural commodity, or the area has been used and will continue to be used for the production of an agricultural commodity in a commonly used rotation with aquaculture, grasses, legumes or pasture production. *Id.*

Congress amended the wetland conservation (''Swampbuster'') provisions of the FSA in 1996 to state that USDA certifications of eligibility for program benefits (*e.g.,* determinations by Natural Resources Conservation Service (NRCS) that particular areas constitute prior converted cropland) ''shall remain valid and in effect as long as the area is devoted to an agricultural use or until such time as the person affected by the certification requests review of the certification by the Secretary [of Agriculture].'' Public Law 104–127, 322(a)(4); 16 U.S.C. 3822(a)(4). Thus, for purposes of farm program eligibility, the 1996 amendments designate as prior converted cropland those areas that may not have qualified for the CWA exclusion under the abandonment principles from the 1993 preamble, so long as such areas remain in agricultural use. The agencies did not update their prior converted cropland regulations for purposes of the CWA following the 1996 Swampbuster amendments, as those regulations neither defined prior converted cropland nor specified when a valid prior converted cropland determination might cease to be valid. However, in 2005, the Army and USDA issued a joint Memorandum to the Field (the 2005 Memorandum) in an effort to again align the CWA 404 program with

[6] For convenience, the agencies generally refer to the Corps' regulations throughout this notice. EPA codification of the definition of ''waters of the United States'' is found at 40 CFR 110.1, 112.2, 116.3, 117.1, 122.2, 230.3, 232.2, 300.5, 401.11, and Appendix E to Part 300.

[7] ''Traditional navigable waters'' (or waters that are traditionally understood as navigable) refers to all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters subject to the ebb and flow of the tide.

Swampbuster.[8] The 2005 Memorandum provided that a ''certified [prior converted] determination made by [USDA] remains valid as long as the area is devoted to an agricultural use. If the land changes to a non-agricultural use, the [prior converted] determination is no longer applicable and a new wetland determination is required for CWA purposes.''

The 2005 Memorandum did not clearly address the abandonment principle that the agencies had been implementing since the 1993 rulemaking. The change in use policy was also never promulgated as a rule and was declared unlawful by one district court because it effectively modified the 1993 preamble language without any formal rulemaking process. *New Hope Power Co.* v. *U.S. Army Corps of Eng'rs,* 746 F. Supp. 2d 1272, 1282 (S.D. Fla. 2010).

3. Supreme Court Decisions

From the earliest rulemaking efforts following adoption of the 1972 CWA amendments, to the agencies most recent attempt to define ''waters of the United States'' in 2015, the sparse statutory definition has spurred substantial litigation testing the meaning of the phrase. Hundreds of cases and dozens of courts have attempted to discern the intent of Congress when crafting the phrase. *See, e.g., Rapanos* v. *United States,* 547 U.S. 715, 739 (2006) (Scalia, J., plurality) (briefly summarizing case history). The federal courts have established different analytical frameworks to interpret the phrase, and the applicable test may differ from state to state. *See, e.g.,* Memorandum from Dick Pedersen, President of the Environmental Council of the States (ECOS) of September 11, 2014 Concerning Waters of the United States under the Act at 2–23 (2014) (hereinafter, the ''ECOS Memorandum''), *available at http://acoel.org/file.axd?file=2014%2f9%2fWaters+of+the+U+S+Final+9_11_14.pdf* (summarizing case history following *Rapanos*).

As part of this complex litigation history, three key U.S. Supreme Court decisions have interpreted the term ''waters of the United States'' and its implementing regulations and serve as guideposts for the agencies' interpretation of the phrase ''waters of the United States.'' In 1985, for example, the Supreme Court deferred to the Corps' assertion of jurisdiction over wetlands actually abutting a traditional navigable water in Michigan, stating that adjacent wetlands may be regulated as ''waters of the United States'' because they are ''inseparably bound up'' with navigable waters and ''in the majority of cases'' have ''significant effects on water quality and the aquatic ecosystem'' in those waters. *United States* v. *Riverside Bayview Homes,* 474 U.S. 121, 131–35 & n.9 (1985). The Court recognized that ''[i]n determining the limits of its power to regulate discharges under the Act, the Corps must necessarily choose some point at which water ends and land begins . . . . . Where on this continuum to find the limit of 'waters' is far from obvious.'' *Id.* at 132. The Court acknowledged the ''inherent difficulties of defining precise bounds to regulable waters,'' and deferred to the agencies' interpretation that the close ecological relationship between adjacent wetlands and traditional navigable waters provided a legal justification for treating wetlands as waters. *Id.* at 134. The Court also ''conclude[d] that a definition of 'waters of the United States' encompassing all wetlands adjacent to other bodies of water over which the Corps has jurisdiction is a permissible interpretation of the Act.'' *Id.* at 135.

The Supreme Court again addressed the definition of ''waters of the United States'' in *Solid Waste Agency of Northern Cook County* v. *U.S. Army Corps of Engineers,* 531 U.S. 159 (2001) (*SWANCC*). In *SWANCC,* the Court relied on the statute to reject a claim of federal jurisdiction over nonnavigable, isolated, intrastate ponds that lack a sufficient connection to traditional navigable waters, noting that the term ''navigable'' must be given meaning within the context and application of the statute. *Id.* The Court held that interpreting the statute to extend to nonnavigable, isolated, intrastate ponds that lack a sufficient connection to traditional navigable waters would invoke the outer limits of Congress' power under the Commerce Clause. *Id.* at 172. Where an administrative interpretation of a statute presses against the outer limits of Congress' constitutional authority, the Court explained, it expects a clear statement from Congress that it intended that result, and even more so when the broad interpretation authorizes federal encroachment upon a traditional state power. *Id.* The CWA contains no such clear statement. *Id.* at 174.

In January 2003, EPA and the Corps issued joint guidance interpreting the Supreme Court decision in *SWANCC.*[9] The guidance indicated that *SWANCC* focused on nonnavigable, isolated, intrastate waters, and called for field staff to coordinate with their respective Corps or EPA Headquarters on jurisdictional determinations which asserted jurisdiction over such waters. The agencies at that time focused the application of *SWANCC* to its facts, and applied the decision as restricting the exercise of federal jurisdiction based on the Migratory Bird Rule.

The Court most recently interpreted the term ''waters of the United States'' in *Rapanos* v. *United States,* 547 U.S. 715 (2006). *Rapanos* involved two consolidated cases in which the CWA had been applied to wetlands located near man-made ditches that were ultimately connected to traditional navigable waters. All members of the Court agreed that the term ''waters of the United States'' encompasses some waters that are not navigable in the traditional sense.

A four-Justice plurality interpreted the term ''waters of the United States'' to ''include[ ] only those relatively permanent, standing or continuously flowing bodies of water 'forming geographic features' that are described in ordinary parlance as 'streams[,] . . . oceans, rivers, [and] lakes,' '' *Rapanos,* 547 U.S. at 739 (Scalia, J., plurality) (quoting *Webster's New International Dictionary* 2882 (2d ed. 1954)), and ''wetlands with a continuous surface connection'' to a relatively permanent water. *Id.* at 742. The plurality explained that ''[w]etlands with only an intermittent, physically remote hydrologic connection to 'waters of the United States' do not implicate the boundary-drawing problem of *Riverside Bayview,*'' and thus do not have the ''necessary connection'' to covered waters that triggers CWA jurisdiction. *Id.* at 742. The plurality also noted that its reference to ''relatively permanent'' waters did ''not necessarily exclude streams, rivers, or lakes that might dry up in extraordinary circumstances, such as drought,'' or ''*seasonal* rivers, which contain continuous flow during some months of the year but no flow during dry months . . . .'' *Id.* at 732 n.5 (emphasis in original).

In a concurring opinion, Justice Kennedy took a different approach, concluding that ''to constitute 'navigable waters' under the Act, a water or wetland must possess a 'significant nexus' to waters that are or

[8] Memorandum to the Field on Guidance on Conducting Wetland Determinations for the Food Security Act of 1985 and Section 404 of the Clean Water Act, February 25, 2005, *available at https://usace.contentdm.oclc.org/utils/getfile/collection/p16021coll11/id/2508.*

[9] *See* Legal Memoranda Regarding *Solid Waste Agency of Northern Cook County (SWANCC)* v. *United States* (Jan. 15, 2003), *available at https://www.epa.gov/sites/production/files/2016-04/documents/swancc_guidance_jan_03.pdf.*

were navigable in fact or that could reasonably be so made.'' *Id.* at 759 (citing *SWANCC,* 531 U.S. at 167, 172). He stated that adjacent wetlands possess the requisite significant nexus if the wetlands ''either alone or in combination with similarly situated lands in the region, significantly affect the chemical, physical, and biological integrity of other covered waters more readily understood as 'navigable.' '' *Id.* at 780.

Following *Rapanos,* on June 7, 2007, the agencies issued joint guidance entitled, ''Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in *Rapanos* v. *United States* and *Carabell* v. *United States,*'' to address the waters at issue in that decision but did not change the codified definition. The guidance indicated that the agencies would assert jurisdiction over traditional navigable waters and their adjacent wetlands, relatively permanent nonnavigable tributaries of traditional navigable waters and wetlands that abut them, nonnavigable tributaries that are not relatively permanent if they have a significant nexus with a traditional navigable water, and wetlands adjacent to nonnavigable tributaries that are not relatively permanent if they have a significant nexus with a traditional navigable water. The guidance was reissued on December 2, 2008, with minor changes (hereinafter, the ''*Rapanos* Guidance'').[10] After issuance of the *Rapanos* Guidance, Members of Congress, developers, farmers, state and local governments, environmental organizations, energy companies, and others asked the agencies to replace the guidance with a regulation that would provide clarity and certainty regarding the scope of the waters federally regulated under the CWA.

Since *Rapanos,* litigation has continued to confuse the regulatory landscape. *See, e.g.,* the ECOS Memorandum at 2–23. The Supreme Court also has twice weighed in on topics related to the agencies' implementation of their authorities under the CWA to help clarify federal authority in this area. In each case, members of the Court noted the longstanding confusion regarding the scope of federal jurisdiction under the CWA and the importance of providing clear guidance to the regulated community. In 2012, for example, the Supreme Court unanimously rejected EPA's long-standing position that compliance orders issued under the CWA to force property owners to restore wetlands are not judicially reviewable as final agency actions. *See Sackett* v. *EPA,* 132 S. Ct. 1367, 1374 (2012). In a concurring opinion, Justice Alito referred to the jurisdictional reach of the CWA as ''notoriously unclear'' and noted that the Court's decision provided only ''a modest measure of relief.'' *Id.* at 1375 (''For 40 years, Congress has done nothing to resolve this critical ambiguity, and the EPA has not seen fit to promulgate a rule providing a clear and sufficiently limited definition of the phrase'' waters of the United States.).

In 2016, the Supreme Court in a unanimous opinion rejected the Corps' longstanding position that jurisdictional determinations issued by the Corps were not judicially reviewable as final agency actions. Writing for the Court, the Chief Justice recognized that it ''is often difficult to determine whether a particular piece of property contains waters of the United States, but there are important consequences if it does.'' *U.S. Army Corps of Engineers* v. *Hawkes,* 136 S. Ct. 1807, 1812 (2016). Given those important consequences, the Court held that jurisdictional determinations are subject to immediate judicial review when made. Justice Kennedy authored a concurring opinion, ''not to qualify what the Court says but to point out, that based on the Government's representations in this case, the reach and systemic consequences of the Clean Water Act remain a cause for concern.'' *Id.* at 1816 (referring to the ''ominous reach'' of the Act). On remand, the lower court found that the Corps' assertion of jurisdiction over a peat farm more than 90 miles from the nearest traditional navigable water based on the ''significant nexus'' test described in the agencies' *Rapanos* Guidance was ''arbitrary and capricious.'' *Hawkes Co.* v. *United States Army Corps of Eng'rs,* No. 13–107 ADM/TNL, 2017 U.S. Dist. LEXIS 10680 at *33 (D. Minn. Jan. 24, 2017).

4. The 2015 Rule

On June 29, 2015, the agencies issued a final rule amending various portions of the Code of Federal Regulations that set forth a new definition of ''waters of the United States.'' 80 FR 37054 (June 29, 2015). The 2015 Rule revised the definition of ''waters of the United States'' by grouping waters and features in three categories: (1) Waters that are jurisdictional by rule; (2) waters that will be found jurisdictional only upon a case-specific showing of a significant nexus with a primary water;[11] and (3) waters and aquatic features that are expressly excluded from jurisdiction. *Id.* at 37057. The 2015 Rule did not modify the regulatory text from the 1986 regulation for traditional navigable waters, interstate waters, the territorial seas, or impoundments of jurisdictional waters. *Id.* at 37058.

As in the 1986 regulation and its predecessors, the 2015 Rule identified tributaries as jurisdictional. Unlike the 1986 regulation, the 2015 Rule defined ''tributary'' as a water that ''contributes flow, either directly or through another water,'' to a traditional navigable water, interstate water, or the territorial seas, and that has the ''physical indicators of a bed and banks and an ordinary high water mark.'' *Id.* at 37104, 37105–6. The 2015 Rule also defined ''waters of the United States'' to include ''wetlands, ponds, lakes, oxbows, impoundments, and similar waters'' that are ''adjacent to'' a primary water, impoundment, or tributary. *Id.* at 37104. The term ''adjacent'' continued to be defined as in the 1986 regulation to mean ''bordering, contiguous, or neighboring.'' *Id.* at 37105. The 2015 Rule, however, promulgated a new definition for ''neighboring,'' interpreting that term to encompass all waters located within 100 feet of the ordinary high water mark of a category (1) through (5) ''jurisdictional by rule'' water; all waters located within the 100-year floodplain of a category (1) through (5) ''jurisdictional by rule'' water and not more than 1,500 feet from the ordinary high water mark of such water; all waters located within 1,500 feet of the high tide line of a primary water; and all waters within 1,500 feet of the ordinary high water mark of the Great Lakes. *Id.* at 37105. Under the 2015 Rule, the entire water is considered neighboring if any portion of it lies within one of these zones. *See id.*

In addition to the six categories of ''jurisdictional by rule'' waters, the 2015 Rule identifies two other categories of waters that are subject to a case-specific analysis to determine if they have a ''significant nexus'' to a primary water. *Id.* at 37104–5. The first category of these waters consists of five specific types of waters in specific regions of the country considered similarly situated: Prairie potholes, Carolina and Delmarva bays, pocosins, western vernal pools in California, and Texas coastal prairie wetlands. *Id.* at 37105. The second category consists of all waters located within the 100-year floodplain of any primary water and all waters located

[10] *See* U.S. EPA and U.S. Army Corps of Engineers. Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in *Rapanos* v. *United States & Carabell v. United States* at 1 (Dec. 2, 2008) (''*Rapanos* Guidance''), *available at https://www.epa.gov/sites/production/files/2016-02/documents/cwa_jurisdiction_following_rapanos120208.pdf.*

[11] In this notice, a ''primary'' water is a category (1) through (3) ''jurisdictional by rule'' water according to the 2015 Rule.

within 4,000 feet of the high tide line or ordinary high water mark of any category (1) through (5) ''jurisdictional by rule'' water. *Id.*

The 2015 Rule also changed the implementation of ''significant nexus'' previously adopted by the agencies in the *Rapanos* Guidance. The 2015 Rule defines ''significant nexus'' to mean a water, including wetlands, that either alone or in combination with other similarly situated waters in the region, significantly affects the chemical, physical, or biological integrity of a primary water. 80 FR 37106. ''For an effect to be significant, it must be more than speculative or insubstantial.'' *Id.* The term ''in the region'' means ''the watershed that drains to the nearest'' primary water, and waters are ''similarly situated'' when they function alike and are sufficiently close to function together in affecting downstream primary waters. *Id.* This definition is different than the test articulated by the agencies in their *Rapanos* Guidance. That guidance interpreted ''similarly situated'' to include all wetlands (not waters) adjacent to the same tributary, a less expansive treatment of similarly situated waters than in the 2015 Rule.

Under the 2015 Rule, to determine whether a water, alone or in combination with similarly situated waters, has a significant nexus, one must look at nine functions, including sediment trapping, runoff storage, provision of life cycle dependent aquatic habitat, and others. It is sufficient for determining whether a water has a significant nexus if any single function performed by the water, alone or together with similarly situated waters in the watershed, contributes significantly to the chemical, physical, or biological integrity of the nearest primary water. *Id.* Taken together, the enumeration of the nine functions and the more expansive consideration of ''similarly situated'' in the 2015 Rule relative to the *Rapanos* Guidance could mean that the vast majority of water features in the United States not otherwise excluded from the 2015 Rule's definition of ''waters of the United States'' may come within the jurisdictional purview of the federal government.[12]

The agencies retained exclusions from the definition of ''waters of the United States'' for prior converted cropland and waste treatment systems. *Id.* In addition, the agencies codified several exclusions that reflected longstanding agency practice. *Id.* For instance, certain ditches and artificial, constructed lakes and ponds (including small ornamental waters created in dry land) are excluded from jurisdiction under the 2015 Rule, as are groundwater and a number of other specified features. *See* 80 FR 37109. The agencies also added specific exclusions for ''puddles'' and ''swimming pools'' in response to concerns raised by many stakeholders during the public comment period on the proposed 2015 Rule.

Following publication of the 2015 Rule, 31 States[13] and 53 non-state parties, including environmental groups and groups representing farming, recreational, forestry, and other interests, filed complaints and petitions for review in multiple federal district[14] and appellate[15] courts challenging the 2015 Rule. In those cases, the challengers alleged numerous procedural deficiencies in the development and promulgation of the 2015 Rule and significant substantive deficiencies in the 2015 Rule itself.

The day before the 2015 Rule's August 28, 2015 effective date, the U.S. District Court for the District of North Dakota preliminarily enjoined the 2015 Rule in the 13 States that challenged the rule in that court.[16] The district court found those States were ''likely to succeed'' on the merits of their challenge to the 2015 Rule because, among other reasons, ''it appears likely that the EPA has violated its Congressional grant of authority in its promulgation of the Rule.'' *North Dakota* v. *EPA,* 127 F. Supp. 3d 1047, 1051 (D.N.D. 2015). In particular, the court noted concern that the 2015 Rule's definition of tributary ''includes vast numbers of waters that are unlikely to have a nexus to navigable waters.'' *Id.* at 1056. Further, the court found that ''it appears likely that the EPA failed to comply with [Administrative Procedure Act (APA)] requirements when promulgating the Rule,'' suggesting that certain distance-based measures were not a logical outgrowth of the proposal to the 2015 Rule. *Id. at* 1058. No party sought an interlocutory appeal.

The numerous petitions for review filed in the courts of appeals were consolidated in the U.S. Court of Appeals for the Sixth Circuit. In that litigation, state and industry petitioners raised concerns about whether the 2015 Rule violated the Constitution and the CWA, and whether its promulgation violated the APA and other statutes. Environmental petitioners also challenged the 2015 Rule, claiming that the 2015 Rule was too narrow. On October 9, 2015, approximately six weeks after the 2015 Rule took effect in the 37 States, the District of Columbia, and U.S. Territories that were not subject to the preliminary injunction issued by the District of North Dakota, the Sixth Circuit stayed the 2015 Rule nationwide after finding, among other things, that State petitioners had demonstrated ''a substantial possibility of success on the merits of their claims.'' *In re EPA & Dep't of Def. Final Rule,* 803 F.3d 804 (6th Cir. 2015) (''*In re EPA*'').

On January 13, 2017, the U.S. Supreme Court granted *certiorari* on the question of whether the courts of appeals have original jurisdiction to review challenges to the 2015 Rule. *See Nat'l Ass'n of Mfrs.* v. *Dep't of Defense,* 137 S. Ct. 811 (2017). The Sixth Circuit granted petitioners' motion to hold in abeyance the briefing schedule in the litigation challenging the 2015 Rule pending a Supreme Court decision on the question of the court of appeals' jurisdiction. On January 22, 2018, the Supreme Court, in a unanimous opinion, held that the 2015 Rule is subject to direct review in the district courts. *Nat'l Ass'n of Mfrs.* v. *Dep't of Def.,* 138 S. Ct. 617, 624 (Jan. 22, 2018). Throughout the pendency of the Supreme Court litigation (and for a short time thereafter), the Sixth Circuit's nationwide stay remained in effect. In response to the Supreme Court's decision, on February 28, 2018, the Sixth Circuit lifted the stay and dismissed the corresponding petitions for review. *See In re Dep't of Def. & EPA Final Rule,* 713 Fed. Appx. 489 (6th Cir. 2018).

[12] ''[T]he vast majority of the nation's water features are located within 4,000 feet of a covered tributary, traditional navigable water, interstate water, or territorial sea.'' U.S. EPA and Department of the Army. Economic Analysis of the EPA-Army Clean Water Rule at 11 (May 20, 2015) (''2015 Rule Economic Analysis'') (Docket ID: EPA–HQ–OW–2011–0880–20866), *available at https://www.regulations.gov/document?D=EPA-HQ-OW-2011-0880-20866.*

[13] Alabama, Alaska, Arizona, Arkansas, Colorado, Florida, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico (Environment Department and State Engineer), North Carolina (Department of Environment and Natural Resources), North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Utah, West Virginia, Wisconsin, and Wyoming. Iowa joined the challenge later in the process, bringing the total to 32 States.

[14] U.S. District Courts for the Northern and Southern District of Georgia, District of Minnesota, District of North Dakota, Southern District of Ohio, Northern District of Oklahoma, Southern District of Texas, District of Arizona, Northern District of Florida, District of the District of Columbia, Western District of Washington, Northern District of California, and Northern District of West Virginia.

[15] U.S. Court of Appeals for the Second, Fifth, Sixth, Eighth, Ninth, Tenth, Eleventh, and District of Columbia Circuits.

[16] Alaska, Arizona, Arkansas, Colorado, Idaho, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, South Dakota, and Wyoming. The agencies note that Iowa is now also subject to the preliminary injunction issued by the District of North Dakota. *See* Order, *North Dakota* v. *EPA,* No. 3:15–cv–59 (D.N.D. Sept. 18, 2018).

Since the Supreme Court's jurisdictional ruling, district court litigation regarding the 2015 Rule has resumed. The 2015 Rule continues to be subject to a preliminary injunction issued by the District of North Dakota as to 14 States: Alaska, Arizona, Arkansas, Colorado, Idaho, Iowa, Missouri, Montana, Nebraska, Nevada, North Dakota, South Dakota, Wyoming, and New Mexico. The 2015 Rule also is subject to a preliminary injunction recently issued by the United States District Court for the Southern District of Georgia as to 11 more States: Georgia, Alabama, Florida, Indiana, Kansas, Kentucky, North Carolina, South Carolina, Utah, West Virginia, and Wisconsin. *See Georgia* v. *Pruitt,* No. 15–cv–79 (S.D. Ga.). When issuing the preliminary injunction, the Southern District of Georgia court held that the State plaintiffs had demonstrated ''a likelihood of success on their claims that the [2015] WOTUS Rule was promulgated in violation of the CWA and the APA.'' *Georgia* v. *Pruitt,* No. 15–cv–79, slip op. at 10 (S.D. Ga. June 8, 2018) (Order Granting Preliminary Injunction) (''*Georgia*''). In support of the preliminary injunction, the court stated that the 2015 Rule failed to meet the standard expounded in *SWANCC* and *Rapanos,* and that the rule was fatally defective because it ''allows the Agencies to regulate waters that do not bear any effect on the 'chemical, physical, and biological integrity' of any navigable-in-fact water.'' *Id.* at 12. The court also held that the plaintiffs ''have demonstrated a likelihood of success on both of their claims under the APA'' that the 2015 Rule ''is arbitrary and capricious'' and ''that the final rule is not a logical outgrowth of the proposed rule.'' *Id.* at 13.

In September 2018, the United States District Court for the Southern District of Texas issued a preliminary injunction against the 2015 Rule in response to motions filed by the States of Texas, Louisiana, and Mississippi and several business associations, finding that enjoining the rule would provide ''much needed governmental, administrative, and economic stability'' while the rule undergoes judicial review. *See Texas* v. *EPA,* No. 3:15–cv–162, 2018 U.S. Dist. LEXIS 160443, at *4 (S.D. Tex. Sept. 12, 2018). The court observed that if it did not temporarily enjoin the rule, ''it risks asking the states, their governmental subdivisions, and their citizens to expend valuable resources and time operationalizing a rule that may not survive judicial review.'' *Id.* At this time, the 2015 Rule is enjoined in 28 States and remains in effect following the lift of the Sixth Circuit stay in 22 States, the District of Columbia, and U.S. Territories.

C. Executive Order 13778, the ''Step One'' Notice of Proposed Rulemaking, and the Applicability Date Rule

On February 28, 2017, the President issued Executive Order 13778 entitled ''Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the 'Waters of the United States' Rule.'' Section 1 of the Executive Order states, ''[i]t is in the national interest to ensure the Nation's navigable waters are kept free from pollution, while at the same time promoting economic growth, minimizing regulatory uncertainty, and showing due regard for the roles of the Congress and the States under the Constitution.'' The Executive Order directs the EPA and the Army to review the 2015 Rule for consistency with the policy outlined in section 1 of the Order and to issue a proposed rule rescinding or revising the 2015 Rule as appropriate and consistent with law (Section 2). The Executive Order also directs the agencies to ''consider interpreting the term 'navigable waters' . . . in a manner consistent with'' Justice Scalia's plurality opinion in *Rapanos* v. *United States,* 547 U.S. 715 (2006) (Section 3).

On March 6, 2017, the agencies published a notice of intent to review the 2015 Rule and provide notice of a forthcoming proposed rulemaking consistent with the Executive Order. 82 FR 12532. Shortly thereafter, the agencies announced that they would implement the Executive Order in a two-step approach. On July 27, 2017, the agencies issued the ''Step One'' notice of proposed rulemaking (82 FR 34899) that proposed to repeal the 2015 Rule and recodify the regulatory text that governed prior to the promulgation of the 2015 Rule, consistent with Supreme Court decisions and informed by applicable guidance documents and agency practice, and which the agencies have been implementing since the judicial stay of the 2015 Rule. 82 FR 34899. The agencies invited comment on the notice of proposed rulemaking over a 62-day period. On July 12, 2018, the agencies published a supplemental notice of proposed rulemaking to clarify, supplement, and seek additional comment on the Step One notice of proposed rulemaking. 83 FR 32227.

On November 22, 2017, the agencies published and solicited public comment on a proposal to establish an applicability date for the 2015 Rule that would be two years from the date of any final rule (82 FR 55542). On February 6, 2018, the agencies issued a final rule, 83 FR 5200 (Feb. 6, 2018), adding an applicability date to the 2015 Rule. The applicability date was established as February 6, 2020. When adding an applicability date to the 2015 Rule, the agencies clarified that they will continue to implement nationwide the previous regulatory definition of ''waters of the United States,'' consistent with the practice and procedures the agencies implemented long before and immediately following the 2015 Rule pursuant to the preliminary injunction issued by the District of North Dakota and the nationwide stay issued by the Sixth Circuit. The agencies further explained that the final applicability date rule would ensure regulatory certainty and consistent implementation of the CWA nationwide while the agencies reconsider the 2015 Rule and pursue further rulemaking to develop a new definition of ''waters of the United States.''

The applicability date rule was challenged in a number of district courts by States and environmental organizations. On August 16, 2018, the U.S. District Court for the District of South Carolina granted summary judgment in favor of the plaintiffs and enjoined the Applicability Date Rule nationwide. *South Carolina Coastal Conservation League, et al.,* v. *Pruitt,* No. 2–18–cv–330–DCN, 2018 U.S. Dist. LEXIS 138595 (D.S.C. Aug. 16, 2018). In addition, on November 26, 2018, the U.S. District Court for the Western District of Washington vacated the Applicability Date Rule nationwide. *Puget Soundkeeper Alliance, et al.* v. *Andrew Wheeler, et al.,* No. C15–1342–JCC (W.D. Wash. November 26, 2018). As a result, the 2015 Rule is now in effect in 22 States.[17] The 2015 Rule continues to be subject to preliminary injunctions issued by the U.S. District Court for the District of North Dakota, the U.S. District Court for the Southern District of Georgia, and the U.S. District Court for the Southern District of Texas in a total of 28 States.

D. Summary of Stakeholder Outreach

Following the March 6, 2017 **Federal Register** notice announcing the agencies' intent to review and rescind or revise the 2015 Rule, the agencies initiated an effort to engage the public to hear perspectives as to how the agencies could define ''waters of the United States,'' including creating a new website to provide information on the

[17] To assist the public in keeping up with the changing regulatory landscape of federal jurisdiction under the CWA, the EPA has posted a map of current effective regulation by state online at *https://www.epa.gov/wotus-rule/definition-waters-united-states-rule-status-and-litigation-update.*

rulemaking. *See www.epa.gov/wotus-rule.* On April 19, 2017, the agencies held an initial Federalism consultation with State and local government officials as well as national organizations representing such officials. The agencies also convened several additional meetings with intergovernmental associations and their members to solicit input on the future rule. The EPA, with participation from the Army, initiated Tribal consultation on April 20, 2017, under the *EPA Policy on Consultation and Coordination with Indian Tribes.* See Section VI for further details on the agencies' Federalism and Tribal consultations.

In addition to engaging key State, tribal and local officials through Federalism and Tribal consultations, the agencies sought feedback on the definition of ''waters of the United States'' from a broad audience of stakeholders, including small entities (small businesses, small organizations and small government jurisdictions), through a series of outreach webinars that were held September 9, 2017, through November 21, 2017, as well as an in-person meeting for small entities on October 23, 2017. A summary of these public meetings is available in the docket (Docket Id. No. EPA–HQ–OW–2018–0149) for this proposed rule. The webinars were tailored to specific sectors, including agriculture (row crop, livestock, silviculture); conservation (hunters and anglers); small entities (small businesses, small organizations, small jurisdictions); construction and transportation; environment and public advocacy (including health and environmental justice); mining; energy and chemical industry; scientific organizations and academia; stormwater, wastewater management, and drinking water agencies; and the general public.

At the webinars and meetings, the agencies provided a presentation and sought input on specific issues, such as potential approaches to defining ''relatively permanent'' waters and ''continuous surface connections'' after the plurality opinion in *Rapanos.* The agencies did not provide participants with specific rule text or alternatives for consideration, but requested feedback on other considerations addressing specific geomorphological features, exclusions and exemptions, costs and benefits, and aquatic resource data that the agencies might consider in the technical analyses for a future rule. Participant comments and letters submitted represent a diverse range of interests, positions, suggestions, and recommendations provided to the agencies. Several themes emerged throughout this process, including support for ongoing State and tribal engagement; clarity and predictability of the regulation; specific suggestions for rule language; suggested exclusions and exemptions; regionalization of the definition; and, procedural concerns.

As part of this outreach effort, the agencies established a public recommendations docket (Docket ID No. EPA–HQ–OW–2017–0480) that opened August 28, 2017, and closed November 28, 2017. The agencies received over 6,300 recommendations that have been considered as the agencies developed this proposed rule, which are available on *Regulations.gov* at *https://www.regulations.gov/docket?D=EPA-HQ-OW-2017-0480.* Another source of recommendations as to how the agencies should define ''waters of the United States'' came from public comments on the agencies' proposed ''Step One'' rule (82 FR 34899) and the July 2018 supplemental notice of proposed rulemaking (83 FR 32227). These comments also have been considered.

In addition, on March 8 and 9, 2018, the agencies held an in-person meeting with a group of nine states (Arizona, Arkansas, Florida, Iowa, Maryland, Minnesota, Oregon, Pennsylvania, and Wyoming), and convened a subsequent in-person meeting on March 22, 2018, with representatives from all states at the spring meeting of the Environmental Council of the States. The agencies also held an in-person Tribal Co-Regulators Workshop on March 6 and 7, 2018. These meetings were intended to seek technical input on the proposed rule. A summary of these meetings is available in the docket (Docket Id. No. EPA–HQ–OW–2018–0149) for this proposed rule.

E. Overview of Legal Construct for the Proposed Rule

As the preceding summary of the statutory and regulatory history makes clear, the central term delineating the federal geographic scope of authority under the CWA—''waters of the United States''—has been the subject of debate and litigation for many years. The agencies today are proposing to establish a regulation that would define ''waters of the United States'' in simple, understandable, and implementable terms to reflect the ordinary meaning of the statutory term, as well as to adhere to Constitutional and statutory limitations, the policies of the CWA, and case law, and to meet the needs of regulatory agencies and the regulated community. This subsection summarizes the legal principles that inform the agencies' proposal, and the following section (Section III) describes how the agencies are applying those legal principles to support the proposed ''waters of the United States'' definition.

1. Statutory Framework

To determine the scope of executive branch authority under the CWA, the agencies begin with the text of the statute. The objective of the CWA, as established by Congress, is ''to restore and maintain the chemical, physical, and biological integrity of the Nation's waters.'' 33 U.S.C. 1251(a). As discussed in Section II.B above, in order to meet that objective, Congress declared two national water quality goals and established several key policies that direct the work of the agencies. Congress also envisioned a major role for the States in implementing the CWA, carefully balancing the traditional power of States to regulate land and water resources within their borders with the need for national water quality regulation.

The agencies have developed programs designed to ensure that the full statute is implemented as Congress intended. *See, e.g., Hibbs* v. *Winn,* 542 U.S. 88, 101 (2004) (''A statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant.''). This includes pursuing the overall ''objective'' of the CWA while implementing the specific ''policy'' directives from Congress to, among other things, ''recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution'' and ''to plan the development and use . . . of land and water resources,'' 33 U.S.C. 1251(b). *See Webster's II, New Riverside University Dictionary* (1994) (defining ''policy'' as a ''plan or course of action, as of a government[,] designed to influence and determine decisions and actions;'' an ''objective'' is ''something worked toward or aspired to: Goal'').[18] The

[18] As Congress drafted the 1972 CWA amendments, the Senate bill set the ''no-discharge of pollutants into the navigable water by 1985'' provision as a policy whereas the House bill set it as a goal. The Act was ultimately passed with the ''no-discharge by 1985'' provision established as a goal. *See* 33 U.S.C 1251(a)(1). In House consideration of the Conference Report, Congressman Jones captured the policy versus goal distinction in Section 101(a)(1) as follows: ''The objective of this legislation is to restore and preserve for the future the integrity of our Nation's waters. The bill sets forth as a national goal the complete elimination of all discharges into our navigable waters by 1985, but . . . the conference report states clearly that achieving the 1985 target date is a goal, not a national policy. As such, it serves as a focal point for long-range planning, and

Continued

agencies therefore recognize a distinction between the specific word choices of Congress, including the need to develop regulatory programs that aim to accomplish the goals of the Act while implementing the specific policy directives of Congress.[19] To do so, the agencies must determine what Congress had in mind when it defined ''navigable waters'' in 1972 as simply ''the waters of the United States.''

Congress' authority to regulate navigable waters derives from its power to regulate the ''channels of interstate commerce'' under the Commerce Clause. *Gibbons* v. *Ogden,* 22 U.S. (9 Wheat.) 1 (1824); *see also United States* v. *Lopez,* 514 U.S. 549, 558–59 (1995) (describing the ''channels of interstate commerce'' as one of three areas of congressional authority under the Commerce Clause). The Supreme Court explained in *SWANCC* that the term ''navigable'' indicates ''what Congress had in mind as its authority for enacting the Clean Water Act: its traditional jurisdiction over waters that were or had been navigable in fact or which could reasonably be so made.'' 531 U.S. 159, 172 (2001). The Court further explained that nothing in the legislative history of the Act provides any indication that ''Congress intended to exert anything more than its commerce power over navigation.'' *Id.* at 168 n.3. The Supreme Court, however, has recognized that Congress intended ''to exercise its powers under the Commerce clause to regulate at least some waters that would not be deemed 'navigable' under the classical understanding of that term.'' *Riverside Bayview,* 474 U.S. at 133; *see also SWANCC,* 531 U.S. at 167.

The classical understanding of the term navigable was first articulated by the Supreme Court in *The Daniel Ball:*

> Those rivers must be regarded as public navigable rivers in law which are navigable in fact. And they are navigable in fact when they are used, or are susceptible of being used, in their ordinary condition, as highways of commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel on water. And they constitute navigable waters of the United States within the meaning of the Acts of Congress, in contradistinction from the navigable waters of the States, when they form in their ordinary condition by themselves, or by uniting with other waters, a continued highway over which commerce is or may be carried on with other States or foreign countries in the customary modes in which such commerce is conducted by water.

77 U.S. (10 Wall.) 557, 563 (1871). Over the years, this traditional test has been expanded to include waters that had been used in the past for interstate commerce, *see Economy Light & Power Co.* v. *United States,* 256 U.S. 113, 123 (1921), and waters that are susceptible for use with reasonable improvement, *see United States* v. *Appalachian Elec. Power Co.,* 311 U.S. 377, 407–10 (1940).

By the time the 1972 CWA amendments were enacted, the Supreme Court had also made clear that Congress' authority over the channels of interstate commerce was not limited to regulation of the channels themselves, but could extend to non-navigable tributaries as necessary to protect the channels. *See Oklahoma ex rel. Phillips* v. *Guy F. Atkinson Co.,* 313 U.S. 508, 523 (1941) (''Congress may exercise its control over the non-navigable stretches of a river in order to preserve or promote commerce on the navigable portions.''). The Supreme Court had also clarified that Congress could regulate waterways that formed a part of a channel of interstate commerce, even if they are not themselves navigable or do not cross state boundaries. *See Utah* v. *United States,* 403 U.S. 9, 11 (1971).

These developments were discussed during the legislative process leading up to the passage of the 1972 CWA amendments, and certain members referred to the scope of the amendments as encompassing waterways that serve as ''links in the chain'' of interstate commerce as it flows through various channels of transportation, such as railroads and highways. *See, e.g.,* 118 Cong. Rec. 33756–57 (1972) (statement of Rep. Dingell); 118 Cong. Rec. 33699 (Oct. 4, 1972) (statement of Sen. Muskie).[20] Other references suggest that congressional committees at least contemplated applying the ''control requirements'' of the Act ''to the navigable waters, portions thereof, and their tributaries.'' S. Rep. No. 92–414, 92nd Cong. 1st Sess. at 77 (1971). And in 1977, when Congress authorized State assumption over the section 404 dredged or fill material permitting program, Congress limited the scope of assumable waters by requiring the Corps to retain permitting authority over Rivers and Harbors Act waters (as identified by the *Daniel Ball* test) plus wetlands adjacent to those waters, minus historic use only waters. *See* 33 U.S.C. 1344(g)(1).[21] This suggests that Congress had in mind a broader scope of waters subject to CWA jurisdiction than waters traditionally understood as navigable. *See SWANCC,* 531 U.S. at 171; *Riverside Bayview,* 474 U.S. at 138 n.11.

Thus, Congress intended to assert federal authority over more than just waters traditionally understood as navigable, and Congress rooted that authority in ''its commerce power over navigation.'' *SWANCC,* 531 U.S. at 168 n.3. However, there must necessarily be a limit to that authority and to what water is subject to federal jurisdiction. How the agencies should exercise that authority has been the subject of dispute for decades, but the Supreme Court on three occasions has analyzed the issue and provided some instructional guidance.

2. Supreme Court Precedent

a. Adjacent Wetlands

In *Riverside Bayview,* the Supreme Court considered the Corps' assertion of jurisdiction over ''low-lying, marshy land'' immediately abutting a water traditionally understood as navigable on the grounds that it was an ''adjacent wetland'' within the meaning of the Corps' then existing regulations. 474 U.S. at 124. The Court addressed the question of whether non-navigable wetlands may be regulated as ''waters of the United States'' on the basis that they are ''adjacent to'' navigable-in-fact waters and ''inseparably bound up with'' them because of their ''significant effects on water quality and the aquatic ecosystem.'' *Id.* at 131–135 & n.9.

In determining whether to give deference to the Corps' assertion of jurisdiction over adjacent wetlands, the Court acknowledged the difficulty in determining where the limits of federal jurisdiction end, noting that the line is somewhere between open water and dry land:

for research and development in water pollution control technology . . . . While it is our hope that we can succeed in eliminating all discharge into our waters by 1985, without unreasonable impact on the national life, we recognized in this report that too many imponderables exist, some still beyond our horizons, to prescribe this goal today as a legal requirement.'' 118 Cong. Rec. H. 33749 (daily ed. October 4, 1972).

[19] *See, e.g., Nat'l Fed'n of Indep. Bus.* v. *Sebelius,* 567 U.S. 519, 544, (2012) (''Where Congress uses certain language in one part of a statute and different language in another, it is generally presumed that Congress acts intentionally''); *Russello* v. *United States,* 464 U.S. 16, 23 (1983) (''[Where] Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.'').

[20] The agencies recognize that individual member statements are not a substitute for full congressional intent, but they do help provide context for issues that were discussed during the legislative debates. For a detailed discussion of the legislative history of the 1972 CWA amendments, *see, e.g.,* Albrecht & Nickelsburg, *Could SWANCC Be Right? A New Look at the Legislative History of the Clean Water Act,* 32 ELR 11042 (Sept. 2002).

[21] For a detailed discussion of the legislative history supporting the enactment of CWA section 404(g), see *Final Report of the Assumable Waters Subcommittee* (May 2017), App. F., *available at https://www.epa.gov/sites/production/files/2017-05/documents/awsubnaceptpresent5-final.pdf.*

> *In determining the limits of its power to regulate discharges under the Act,* the Corps must necessarily choose some point at which water ends and land begins. Our common experience tells us that this is often no easy task: the transition from water to solid ground is not necessarily or even typically an abrupt one. Rather, between open waters and dry land may lie shallows, marshes, mudflats, swamps, bogs—in short, a huge array of areas that are not wholly aquatic but nevertheless fall far short of being dry land. Where on this continuum to find the limit of ''waters'' is far from obvious.

Id. at 132 (emphasis added). Within this statement, the Supreme Court identifies a basic principle for adjacent wetlands: The limits of jurisdiction lie within the ''continuum'' or ''transition'' ''between open waters and dry land.'' Observing that Congress intended the CWA ''to regulate at least some waters that would not be deemed 'navigable,' '' the Court therefore held that it is ''a permissible interpretation of the Act'' to conclude that ''a wetland that actually abuts on a navigable waterway'' falls within the ''definition of 'waters of the United States.' '' *Id.* at 133, 135. Thus, a wetland that abuts a navigable water traditionally understood as navigable is subject to CWA permitting because it is ''inseparably bound up with the 'waters' of the United States.'' *Id.* at 134. ''This holds true even for wetlands that are not the result of flooding or permeation by water having its source in adjacent bodies of open water.'' *Id.* The Court also noted that the agencies can establish categories of jurisdiction for adjacent wetlands. *See id.* at 135 n.9.

The Supreme Court in *Riverside Bayview* declined to decide whether wetlands that are not adjacent to navigable waters could also be regulated by the agencies. *See id.* at 124 n.2 and 131 n.8. In *SWANCC* a few years later, however, the Supreme Court analyzed a similar question but in the context of an abandoned sand and gravel pit located some distance from a traditional navigable water, with excavation trenches that ponded—some only seasonally—and served as habitat for migratory birds. 531 U.S. at 162–64. The Supreme Court rejected the government's stated rationale for asserting jurisdiction over such ''nonnavigable, isolated, intrastate waters'' as outside the scope of CWA jurisdiction. *Id.* at 171–72. In doing so, the Supreme Court noted that *Riverside Bayview* upheld ''jurisdiction over wetlands that actually abutted on a navigable waterway'' because the wetlands were ''inseparably bound up with the 'waters' of the United States.'' *Id.* at 167.[22] As summarized by the *SWANCC* majority:

> It was the significant nexus between the wetlands and ''navigable waters'' that informed our reading of the CWA in *Riverside Bayview Homes.* Indeed, we did not ''express any opinion'' on the ''question of authority of the Corps to regulate discharges of fill material into wetlands that are not adjacent to bodies of open water. . . . In order to rule for [the Corps] here, we would have to hold that the jurisdiction of the Corps extends to ponds that are not adjacent to open water. But we conclude that the text of the statute will not allow this.

Id. at 167–68 (internal citations omitted).

The Court also rejected the argument that the use of the abandoned ponds by migratory birds fell within the power of Congress to regulate activities that in the aggregate have a substantial effect on interstate commerce, or that the CWA regulated the use of the ponds as a municipal landfill because such use was commercial in nature. Such arguments, the Court noted, raised ''significant constitutional questions.'' *Id.* at 173. ''Where an administrative interpretation of a statute invokes the outer limits of Congress' power, we expect a clear indication that Congress intended that result.'' *Id.* 172–73 (''Congress does not casually authorize administrative agencies to interpret a statute to push the limit of congressional authority''). This is particularly true ''where the administrative interpretation alters the federal-state framework by permitting federal encroachment upon a traditional state power.'' *Id.* at 173; *see also Atascadero State Hospital* v. *Scanlon,* 473 U.S. 234, 242 (1985) (''If Congress intends to alter the 'usual constitutional balance between the States and the Federal Government,' it must make its intention to do so 'unmistakably clear in the language of the statute,' ''); *Gregory* v. *Ashcroft,* 501 U.S. 452, 460–61 (1991) (''the plain statement rule . . . acknowledg[es] that the States retain substantial sovereign powers under our constitutional scheme, powers with which Congress does not readily interfere.''). ''Rather than expressing a desire to readjust the federal-state balance in this manner, Congress chose [in the CWA] to 'recognize, preserve, and protect the primary responsibilities and rights of States . . . to plan the development and use . . . of land and water resources . . . .'' *Id.* at 174 (quoting 33 U.S.C. 1251(b)). The Court found no clear statement from Congress that it had intended to permit federal encroachment on traditional State power, and construed the CWA to avoid the significant constitutional questions related to the scope of Federal authority authorized therein. *Id.*

Historically, the Federal government has interpreted and applied the *SWANCC* decision narrowly, focusing on the specific holding in the case as rejecting federal jurisdiction over the isolated ponds and mudflats at issue in that case based on their use by migratory birds. By contrast, members of the regulated community, certain states and other interested stakeholders have argued that the case stands for a broader proposition based on key federalism and separation of powers principles. They argue that the case should be read as restricting federal jurisdiction over all ''nonnavigable, isolated, intrastate waters'' and argue for a broader interpretation and application of the rationale articulated in the decision.[23] As the agencies revisit the definition of ''waters of the United States'' in this rulemaking, the agencies solicit comment on the proper reading of *SWANCC.* In addition, the agencies solicit comment on whether to revoke their 2003 guidance on the subject should the agencies finalize this proposal because existence of the final rule may mean that guidance on *SWANCC* may no be longer needed.

Several years after *SWANCC,* the Supreme Court considered the concept of adjacency in consolidated cases arising out of the Sixth Circuit. *See Rapanos* v. *United States,* 547 U.S. 715 (2006). In one case, the Corps had determined that wetlands on three separate sites were subject to CWA jurisdiction because they were adjacent to ditches or man-made drains that eventually connected to traditional navigable waters several miles away through other ditches, drains, creeks, and/or rivers. *Id.* at 719, 729. In another case, the Corps had asserted jurisdiction over a wetland separated from a man-made drainage ditch by a four-foot-wide man-made berm. *Id.* at 730. The ditch emptied into another ditch, which then connected to a creek, and eventually connected to Lake St. Clair approximately a mile from the parcel at issue. The berm was largely or entirely

[22] For additional context, at oral argument during *Riverside Bayview,* the government attorney characterized the wetland at issue as ''in fact an adjacent wetland, adjacent—by adjacent, I mean it is immediately next to, abuts, adjoins, borders, whatever other adjective you might want to use, navigable waters of the United States.'' Official Tr. at 5–6, *quoted in* Edgar B. Washburn, *Current Status of the 404 Regulatory Programs,* ALI Wetlands L. & Reg. (May/June 2001).

[23] *See, e.g.,* American Farm Bureau Federation et al. to Hon. Andrew Wheeler and Hon. R.D. James. August 13, 2018. Docket ID: EPA–HQ–OW–2017–0203–15275), *available at https://www.regulations.gov/document?D=EPA-HQ-OW-2017-0203-15275.*

impermeable, but may have permitted occasional overflow from the wetland to the ditch. *Id.* The Court, in a fractured opinion, vacated and remanded the Sixth Circuit's decision upholding the Corps' asserted jurisdiction over the four wetlands at issue, with Justice Scalia writing for the plurality and Justice Kennedy concurring in the judgment but on alternate grounds. *Id.* at 757 (plurality), 787 (Kennedy, J., concurring).

The plurality determined that CWA jurisdiction only extended to adjacent ''wetlands with a continuous surface connection to bodies that are 'waters of the United States' in their own right, so that there is no clear demarcation between 'waters' and wetlands.'' *Id.* at 742. The plurality then concluded that ''establishing . . . wetlands . . . covered by the Act requires two findings: First that the adjacent channel contains a 'wate[r] of the United States,' (*i.e.,* a relatively permanent body of water connected to traditional interstate navigable waters); and second, that the wetland has a continuous surface connection with that water, making it difficult to determine where the 'water' ends and the 'wetland' begins.'' *Id.* (alteration in original).

In reaching the adjacency component of the two-part analysis, the plurality interpreted the *Riverside Bayview* decision, and subsequent *SWANCC* decision characterizing *Riverside Bayview,* as authorizing jurisdiction over wetlands that physically abutted traditional navigable waters. *Id.* at 740–42. The plurality focused on the ''inherent ambiguity'' described in *Riverside Bayview* in determining where on the continuum between open waters and dry land the scope of federal jurisdiction should end. *Id.* at 740. It was ''the inherent difficulties of defining precise bounds to regulable waters,'' *id.* at 741 n.10, according to the plurality, that prompted the Court in *Riverside Bayview* to defer to the Corps' inclusion of adjacent wetlands as ''waters'' subject to CWA jurisdiction based on proximity. *Id.* at 741 (''When we characterized the holding of *Riverside Bayview* in *SWANCC,* we referred to the close connection between waters and the wetlands they gradually blend into: 'It was the significant nexus between the wetlands and 'navigable waters' that informed our reading of the CWA in *Riverside Bayview Homes.*' ''); *see also Riverside Bayview,* 474 U.S. 134, quoting 42 FR 37128 (July 19, 1977) (''For this reason, the landward limit of Federal jurisdiction under Section 404 must include any adjacent wetlands that form the border of or are in reasonable proximity to other waters of the United States, as these wetlands are part of this aquatic system.''). The plurality also noted that ''*SWANCC* rejected the notion that the ecological considerations upon which the Corps relied in *Riverside Bayview* . . . provided an *independent* basis for including entities like 'wetlands' (or 'ephemeral streams') within the phrase 'the waters of the United States.' *SWANCC* found such ecological considerations irrelevant to the question whether physically isolated waters come within the Corps' jurisdiction.'' *Id.* at 741–42 (original emphasis).

Justice Kennedy disagreed with the plurality's determination that adjacency requires a ''continuous surface connection'' to covered waters. *Id.* at 772. In reading the phrase ''continuous surface connection'' to mean a continuous ''surface-water connection,'' *id.* at 776, and interpreting the plurality's standard to include a ''surface-water-connection requirement,'' *id.* at 774, Justice Kennedy stated that ''when a surface-water connection is lacking, the plurality forecloses jurisdiction over wetlands that abut navigable-in-fact waters—even though such navigable waters were traditionally subject to federal authority,'' *id.* at 776, despite the fact that the *Riverside Bayview* Court ''deemed it irrelevant whether 'the moisture creating the wetlands . . . find[s] its source in the adjacent bodies of water.'' *Id.* at 772 (internal citations omitted).

The plurality did not directly address the precise distinction raised by Justice Kennedy, but did note in response that the ''*Riverside Bayview* opinion required'' a ''continuous *physical* connection,'' *id.* at 751 n.13 (emphasis added), and focused on evaluating adjacency between a ''water'' and a wetland ''in the sense of possessing a continuous surface connection that creates the boundary-drawing problem we addressed in *Riverside Bayview.*'' *Id.* at 757. The plurality also noted that its standard includes a ''physical-connection requirement'' between wetlands and covered waters. *Id.* at 751 n.13. In other words, the plurality appeared to be more focused on the abutting nature rather than the source of water creating the wetlands at issue in *Riverside Bayview* to describe the legal constructs applicable to adjacent wetlands, *see id.* at 747; *see also Webster's II, New Riverside University Dictionary* (1994) (defining ''abut'' to mean ''to border on'' or ''to touch at one end or side of something''), and indeed agreed with Justice Kennedy and the *Riverside Bayview* Court that ''[a]s long as the wetland is 'adjacent' to covered waters . . . its creation *vel non* by inundation is irrelevant.'' *Id.* at 751 n.13.[24]

Because wetlands with a physically remote hydrologic connection do not raise the same boundary-drawing problem presented by actually abutting wetlands, the plurality determined that the ''inherent ambiguity in defining where water ends and abutting ('adjacent') wetlands begin'' upon which *Riverside Bayview* rests does not apply to such features. *Id.* at 742 (''Wetlands with only an intermittent, physically remote hydrologic connection to 'waters of the United States' do not implicate the boundary-drawing problem of *Riverside Bayview,* and thus lack the necessary connection to covered waters that we described as a 'significant nexus' in *SWANCC*[.]''). The plurality supported this position by referring to the Court's treatment of certain isolated waters in *SWANCC* as non-jurisdictional. *Id.* 741–42 (''We held that 'nonnavigable, isolated, intrastate waters—which, unlike the wetlands at issue in *Riverside Bayview,* did not 'actually abu[t] on a navigable waterway,'—were not included as 'waters of the United States.' ''). The plurality found ''no support for the inclusion of physically unconnected wetlands as covered 'waters' '' based on *Riverside Bayview's* treatment of the Corps' definition of adjacent. *Id.* at 747; *see also id.* at 746 (''the Corps' definition of 'adjacent' . . . has been extended beyond reason.'').

Although ultimately concurring in judgment, Justice Kennedy focused on the ''significant nexus'' between adjacent wetlands and traditional navigable waters as the basis for determining whether a wetland is a water subject to CWA jurisdiction. He quotes the *SWANCC* decision, which explains, ''[i]t was the significant nexus between wetlands and navigable waters . . . that informed our reading of the [Act] in *Riverside Bayview Homes.*'' 531 U.S. at 167.

Justice Kennedy then notes that: ''Because such a nexus [in that case] was lacking with respect to isolated ponds, the Court held that the plain text of the statute did not permit the Corps' action.'' 547 U.S. at 767. Justice Kennedy notes that the wetlands at issue in *Riverside Bayview* were ''adjacent to [a] navigable-in-fact waterway[ ]'' while the ''ponds and

[24] The agencies' *Rapanos* Guidance recognizes that the plurality's ''continuous surface connection'' does not refer to a continuous surface *water* connection. *See, e.g., Rapanos* Guidance at n.28 (''A continuous surface connection does not require surface water to be continuously present between the wetland and the tributary.'')

mudflats'' considered in *SWANCC* ''were isolated in the sense of being unconnected to other waters covered by the Act.'' *Id.* at 765–66. ''Taken together, these cases establish that in some instances, as exemplified by *Riverside Bayview,* the connection between a nonnavigable water or wetland and a navigable water may be so close, or potentially so close, that the Corps may deem the water or wetland a 'navigable water' under the Act. In other instances, as exemplified by *SWANCC,* there may be little or no connection. Absent a significant nexus, jurisdiction under the Act is lacking.'' *Id.* at 767.

According to Justice Kennedy, whereas the isolated ponds and mudflats in *SWANCC* lacked a ''significant nexus'' to navigable waters, it is the ''conclusive standard for jurisdiction'' based on ''a reasonable inference of ecological interconnection'' between adjacent wetlands and navigable-in-fact waters that allows for their categorical inclusion as ''waters of the United States.'' *Id.* at 780 (''[T]he assertion of jurisdiction for those wetlands [adjacent to navigable-in-fact waters] is sustainable under the act by showing adjacency alone.''). Justice Kennedy surmised that it may be that the same rationale ''without any inquiry beyond adjacency . . . could apply equally to wetlands adjacent to certain major tributaries,'' noting that the Corps could establish by regulation categories of tributaries based on volume of flow, proximity to navigable waters, or other factors that ''are significant enough that wetlands adjacent to them are likely, in the majority of cases, to perform important functions for an aquatic system incorporating navigable waters.'' *Id.* at 780–81. However, ''[t]he Corps' existing standard for tributaries'' provided Justice Kennedy ''no such assurance'' to infer the categorical existence of a requisite nexus between waters traditionally understood as navigable and wetlands adjacent to nonnavigable tributaries. *Id.* at 781. That is because

> the breadth of the [tributary] standard—which seems to leave wide room for regulation of drains, ditches, and streams remote from any navigable-in-fact water and carrying only minor water volumes towards it—precludes its adoption as the determinative measure of whether adjacent wetlands are likely to play an important role in the integrity of an aquatic system comprising navigable waters as traditionally understood. Indeed, in many cases, wetlands adjacent to tributaries covered by this standard might appear little more related to navigable-in-fact waters than were the isolated ponds held to fall beyond the Act's scope in *SWANCC.*

Id. at 781–82.

To avoid this outcome, Justice Kennedy stated that, absent development of a more specific regulation and categorical inclusion of wetlands adjacent to ''certain major'' or even ''minor'' tributaries as was established in *Riverside Bayview, id.* at 780–81, the Corps ''must establish a significant nexus on a case-by-case basis when it seeks to regulate wetlands based on adjacency to nonnavigable tributaries. Given the potential overbreadth of the Corps' regulations, this showing is necessary to avoid unreasonable applications of the statute.'' *Id.* at 782. Justice Kennedy stated that adjacent ''wetlands possess the requisite nexus, and thus come within the statutory phrase 'navigable waters,' if the wetlands, either alone or in combination with similarly situated lands in the region, significantly affect the chemical, physical, and biological integrity of other covered waters more readily understood as 'navigable.' '' *Id.* at 780. ''Where an adequate nexus is established for a particular wetland, it may be permissible, as a matter of administrative convenience or necessity, to presume covered status for other comparable wetlands in the region.'' *Id.* at 782.

In establishing this significant nexus test, Justice Kennedy relied, in part, on the overall objective of the CWA to ''restore and maintain the chemical, physical and biological integrity of the Nation's waters.'' *Id.* at 779 (quoting 33 U.S.C. 1251(a)). However, Justice Kennedy also acknowledged that ''environmental concerns provide no reason to disregard limits in the statutory text.'' *Id.* at 778. With respect to wetlands adjacent to nonnavigable tributaries, Justice Kennedy therefore determined that ''mere adjacency . . . is insufficient. A more specific inquiry, based on the significant-nexus standard, is . . . necessary.'' *Id.* at 786. By not requiring adjacent wetlands to possess a significant nexus with navigable waters, Justice Kennedy noted that under the Corps' interpretation, federal regulation would be permitted ''whenever wetlands lie alongside a ditch or drain, however remote or insubstantial, that eventually may flow into traditional navigable waters. The deference owed the Corps' interpretation of the statute does not extend so far.'' *Id* at 778–79.

Since the *Rapanos* decision, the Federal government has adopted a broad interpretation of Justice Kennedy's concurring opinion, arguing that his ''significant nexus'' test provides an independent basis for establishing jurisdiction over certain waters of the United States. And rather than limiting the application of Justice Kennedy's opinion to the specific facts and wetlands at issue in that case, the agencies have applied the rationale more broadly to include, for example, the application of the significant nexus test to determining jurisdiction over tributaries, not just wetlands. Many courts have agreed with this position and rely exclusively on Justice Kennedy's significant nexus test, or have held that jurisdiction can be established under either the plurality or concurring opinions. The agencies note that their historically broad interpretation and application of Justice Kennedy's opinion stands in contrast to their more narrow reading and application of the majority opinion in *SWANCC,* where the agencies have historically limited the decision's application to isolated ponds and mudflats used by migratory birds. The agencies therefore invite comment on their reliance on Justice Kennedy's opinion, particularly as compared to their treatment of the *SWANCC* decision. The agencies also solicit comment on whether they should revoke their 2008 *Rapanos* Guidance should the agencies finalize this proposal because existence of the final rule may mean that guidance on *Rapanos* may no longer be needed.

In summary, although the standards that the plurality and Justice Kennedy established are not identical, and each standard excludes some waters that the other standard does not, the standards contain substantial similarities. The plurality and Justice Kennedy agree in principle that the determination must be made using a basic two-step approach that considers: (1) The connection of the wetland to the tributary; and (2) the status of the tributary with respect to downstream traditional navigable waters. The plurality and Justice Kennedy also agree that the connection between the wetland and the tributary must be close. The plurality refers to that connection as a ''continuous surface connection'' or ''continuous physical connection,'' as demonstrated in *Riverside Bayview. Id.* at 742, 751 n.13. Justice Kennedy recognizes that ''the connection between a nonnavigable water or wetland and a navigable water may be so close, or potentially so close, that the Corps may deem the water or wetland a 'navigable water' under the Act.'' *Id.* at 767. The second part of their common analytical framework is addressed in the next section.

b. Tributaries

The definition of tributary was not addressed in either *Riverside Bayview* or

SWANCC. And while the focus of *Rapanos* was on whether the Corps could regulate wetlands far removed from navigable-in-fact waters, the plurality and concurring opinions do provide some guidance as to the potential regulatory status of tributaries to navigable-in-fact waters.

The plurality and Justice Kennedy both recognize the jurisdictional scope of the CWA is not restricted to traditional navigable waters. *Rapanos,* 547 U.S. at 731 (Scalia, J., plurality) (''the Act's term 'navigable waters' includes something more than traditional navigable waters''); *id.* at 767 (Kennedy, J., concurring) (''Congress intended to regulate at least some waters that are not navigable in the traditional sense.''). Both also agree that federal authority under the Act is not without limit. *See id.* at 731–32 (plurality) (''the waters of the United States . . . cannot bear the expansive meaning that the Corps would give it''); *id.* at 778–79 (Kennedy, J., concurring) (''The deference owed to the Corps' interpretation of the statute does not extend'' to ''wetlands'' which ''lie alongside a ditch or drain, however remote or insubstantial, that eventually may flow into traditional navigable waters.'').

With respect to tributaries specifically, both the plurality and Justice Kennedy focus in part on a tributary's contribution of flow to and connection with traditional navigable waters. The plurality would include as ''waters of the United States'' ''only relatively permanent, standing or flowing bodies of water'' and would define such ''waters'' as including streams, rivers, oceans, lakes and other bodies of waters that form geographical features, noting that all such ''terms connote continuously present, fixed bodies of water . . . .'' *Id.* at 732–33, 739. The plurality would also require relatively permanent waters to be connected to traditional navigable waters in order to be jurisdictional. *See id.* at 742 (describing a '' 'wate[r] of the United States''' as ''*i.e.,* a relatively permanent body of water *connected to* traditional interstate navigable waters'') (emphasis added). The plurality would exclude ephemeral flows and related features, stating ''[n]one of these terms encompasses transitory puddles or ephemeral flows of water.'' *Id.* at 733; *see also id.* at 734 (''In applying the definition to 'ephemeral streams,' . . . the Corps has stretched the term 'waters of the United States' beyond parody. The plain language of the statute simply does not authorize this 'Land Is Waters' approach to federal jurisdiction.''). Justice Kennedy would likely exclude some streams considered jurisdictional under the plurality's test, but he may include some that would be excluded by the plurality. *See id.* at 769 (noting that under the plurality's test, ''[t]he merest trickle, if continuous, would count as a 'water' subject to federal regulation, while torrents thundering at irregular intervals through otherwise dry channels would not'').

Both the plurality and Justice Kennedy would include some seasonal or intermittent streams as ''waters of the United States.'' *Id.* at 733 & n.5, 769. The plurality noted, for example, that its reference to ''relatively permanent'' waters did ''not necessarily exclude streams, rivers, or lakes that might dry up in extraordinary circumstances, such as drought,'' or ''*seasonal* rivers, which contain continuous flow during some months of the year but no flow during dry months . . . .'' *Id.* at 732 n.5 (emphasis in original). Neither the plurality nor Justice Kennedy, however, defined with precision where to draw the line. The plurality provides that ''navigable waters'' must have ''at a bare minimum, the ordinary presence of water,'' *id.* at 734, and Justice Kennedy notes that the Corps can identify by regulation categories of tributaries based on volume of flow, proximity to navigable waters, or other factors that ''are significant enough that wetlands adjacent to them are likely, in the majority of cases, to perform important functions for an aquatic system incorporating navigable waters.'' *Id.* at 780–81.

Both the plurality and Justice Kennedy also agreed that the Corps' existing treatment of tributaries raised significant jurisdictional concerns. For example, the plurality was concerned about the Corps' broad interpretation of tributaries themselves. *See id.* at 738 (plurality) (''Even if the term 'the waters of the United States' were ambiguous as applied to channels that sometimes host ephemeral flows of water (which it is not), we would expect a clearer statement from Congress to authorize an agency theory of jurisdiction that presses the envelope of constitutional validity.''). And Justice Kennedy objected to the categorical assertion of jurisdiction over wetlands adjacent to the Corps' existing standard for tributaries ''which seems to leave wide room for regulation of drains, ditches, and streams remote from any navigable-in-fact water and carrying only minor water volumes towards it'' *Id.* at 781 (Kennedy, J. concurring), *see also id.* at 781–82 (''[I]n many cases wetlands adjacent to tributaries covered by this standard might appear little more related to navigable-in-fact waters than were the isolated ponds held to fall beyond the Act's scope in *SWANCC.*''). Thus, while the plurality and Justice Kennedy viewed the question of federal CWA jurisdiction differently, there are sufficient commonalities between these opinions to help instruct the agencies on where to draw the line between Federal and State waters.

3. Principles and Considerations

As discussed in the previous section, a few important principles emerge that can serve as the basis for the agencies' proposed regulatory definitions. As a threshold matter, the power conferred on the agencies under the CWA to regulate the ''waters of the United States'' is grounded in Congress' commerce power over navigation. The agencies can choose to regulate beyond waters more traditionally understood as navigable, including some tributaries to those traditional navigable waters, but must provide a reasonable basis grounded in the language and structure of the Act for determining the extent of jurisdiction. The agencies can also choose to regulate wetlands adjacent to the traditional navigable waters and some tributaries, if the wetlands are closely connected to the tributaries, such as in the transitional zone between open waters and dry land. The Supreme Court's opinion in *SWANCC,* however, calls into question the agencies' authority to regulate nonnavigable, isolated, intrastate waters that lack a sufficient connection to traditional navigable waters, and suggests that the agencies should avoid regulatory interpretations of the CWA that raise constitutional questions regarding the scope of their statutory authority. Finally, the agencies can regulate certain waters by category, which could improve regulatory predictability and certainty and ease administrative burden while still effectuating the purposes of the Act.

In developing a clear and predictable regulatory framework to support this proposed rule, the agencies also recognize and respect the primary responsibilities and rights of States and Tribes to regulate their land and water resources. *See* 33 U.S.C. 1251(b), 1370. The oft-quoted objective of the CWA to ''restore and maintain the chemical, physical, and biological integrity of the Nation's waters,'' *id.* at 1251(a), must be implemented in a manner consistent with Congress' policy directives to the agencies. The Supreme Court long ago recognized the distinction between federal waters traditionally understood as navigable and waters ''subject to the control of the States.'' *The Daniel Ball,* 77 U.S. (10 Wall.) 557, 564–65 (1870).

Over a century later, the Supreme Court in *SWANCC* reaffirmed the State's ''traditional and primary power over land and water use.'' 531 U.S. at 174; *accord Rapanos,* 547 U.S. at 738 (Scalia, J., plurality opinion).

Ensuring that States retain authority over their land and water resources pursuant to section 101(b) and section 510 helps carry out the overall objective of the CWA and ensures that the agencies are giving full effect and consideration to the entire structure and function of the Act. *See, e.g., id.* at 755–56 (Scalia, J., plurality opinion) (''[C]lean water is not the *only* purpose of the statute. So is the preservation of primary state responsibility for ordinary land-use decisions. 33 U.S.C. 1251(b).'') (original emphasis). That includes the dozens of non-regulatory grant, research, nonpoint source, groundwater, and watershed planning programs that were intended by Congress to assist the States in controlling pollution in the nation's waters, not just its navigable waters. These non-regulatory sections of the CWA reveal Congress' intent to restore and maintain the integrity of the nation's waters using federal assistance to support State and local partnerships to control pollution of in the nation's waters in addition to a federal regulatory prohibition on the discharge of pollutants into its navigable waters. Controlling all waters using the Act's federal regulatory mechanisms would significantly reduce the need for the more holistic planning provisions of the Act and the state partnerships they entail. Therefore, by recognizing the distinctions between the nation's waters and its navigable waters and between the overall objective and goals of the CWA and the specific policy directives from Congress, the agencies can fully implement the entire structure of the Act while respecting the specific word choices of Congress. *See, e.g., Nat'l Fed'n of Indep. Bus.* v. *Sebelius,* 567 U.S. at 544.

Further, the agencies are cognizant that the ''Clean Water Act imposes substantial criminal and civil penalties for discharging any pollutant into waters covered by the Act without a permit . . . .'' *U.S. Army Corps of Engineers* v. *Hawkes Co.,* 136 S. Ct. 1807, 1812 (2016); *see also Sackett* v. *EPA,* 132 S. Ct. 1367, 1374–75 (2012) (Alito, J., concurring) (''[T]he combination of the uncertain reach of the Clean Water Act and the draconian penalties imposed for the sort of violations alleged in this case still leaves most property owners with little practical alternative but to dance to the EPA's tune.''). As the Chief Justice observed in *Hawkes,* ''[i]t is often difficult to determine whether a particular piece of property contains waters of the United States, but there are important consequences if it does.'' *Id.; see also id.* at 1816–17 (Kennedy, J., concurring) (''the reach and systemic consequences of the Clean Water Act remain a cause for concern'' and ''continues to raise troubling questions regarding the Government's power to cast doubt on the full use and enjoyment of private property throughout the Nation''). Given the significant civil and criminal penalties associated with the CWA, the agencies seek to promote regulatory certainty while providing fair and predictable notice of the limits of federal jurisdiction. *See, e.g., Sessions* v. *Dimaya,* No. 15–1498, 2018 U.S. LEXIS 2497, at *39, 42–43 (Apr. 17, 2018) (Gorsuch, J., concurring in part and concurring in judgment) (characterizing fair notice as possibly the most fundamental of the protections provided by the Constitution's guarantee of due process, and stating that vague laws are an exercise of ''arbitrary power . . . leaving the people in the dark about what the law demands and allowing prosecutors and courts to make it up'').

Under this proposed rule, the agencies would not view the definition of ''waters of the United States'' as conclusively determining which of the nation's waters warrant environmental protection; rather, the agencies interpret the definition as drawing the boundary between those waters subject to federal requirements under the CWA and those waters that States and Tribes are free to manage under their independent authorities. The agencies are proposing this line-drawing based primarily on their interpretation of the language, structure, and legislative history of the statute and the policy choices of the executive branch agencies.

The agencies interpret their authority to include promulgation of a new regulatory definition of ''waters of the United States,'' consistent with the guidance in Executive Order 13778, so long as the new definition is authorized under the law and based on a reasoned explanation. *FCC* v. *Fox Television Stations, Inc.,* 556 U.S. 502, 515 (2009) (''*Fox*''). A revised rulemaking based on a desired change in policy is well within an agency's discretion and ''[a] change in administration brought about by the people casting their votes is a perfectly reasonable basis for an executive agency's reappraisal'' of its regulations and programs. *Nat'l Ass'n of Home Builders* v. *EPA,* 682 F.3d 1032, 1038 & 1043 (D.C. Cir. 2012) (citing *Fox,* 556 U.S. at 514–15 (Rehnquist, J., concurring in part and dissenting in part)). In developing this proposed rule, the agencies have re-evaluated their legal authority and those policies that they deem most important in shaping the jurisdiction of the CWA: Prioritizing the text of the statute, adherence to constitutional limitations, including the autonomy of States, and providing clarity for the regulated community.

The agencies consider these proposed priorities to be reasonable, especially in light of the long history of controversy and confusion over this definition. In concurring with the *Rapanos* plurality decision, Chief Justice Roberts stated that ''[g]iven the broad, somewhat ambiguous, but clearly limiting terms Congress employed in the Clean Water Act, the [agencies] would have enjoyed plenty of room to operate in developing some notion of an outer bound to the reach of their authority'' under the CWA, and that the agencies' interpretations under the Act are ''afforded generous leeway by the courts.'' *Rapanos,* 547 U.S. at 758 (Roberts, C.J., concurring) (emphasis in original) (''Rather than refining its view of its authority in light of our decisions in *SWANCC,* . . . the Corps chose to adhere to its essentially boundless view of the scope of its power. The upshot today is another defeat for the agency.''). In this proposed rule, as described in detail in Section III below, the agencies are proposing outer bounds for their authority under the Act that they consider objective and reasonable, and that are consistent with its text, structure, legislative history and applicable Supreme Court precedent. The agencies solicit comment on all aspects of the proposed definition and whether it would strike the proper balance between the regulatory authority of the Federal government and States, meets its obligation to provide fair notice to members of the regulated community, and adheres to the overall structure and function of the CWA by ensuring the protection of the nation's waters.

III. Proposed Definition of ''Waters of the United States''

Below is a summary of the key substantive provisions of this proposed rule. Each subsection describes what the agencies are proposing, why the agencies are proposing this approach, how the agencies might implement the approach, and specific issues upon which the agencies are seeking comment. To assist the reader, the longer subsections have internal headings.

As a threshold matter, in this proposal the agencies would interpret the term ''the waters'' in the phrase ''the waters

of the United States'' to encompass relatively permanent flowing and standing waterbodies that are traditional navigable waters in their own right or that have a specific connection to traditional navigable waters, as well as wetlands abutting or having a direct hydrologic surface connection to those waters. As the plurality decision in *Rapanos* notes, the term ''the waters'' is most commonly understood to refer to ''streams and bodies forming geographical features such as oceans, rivers, lakes,'' or ''the flowing or moving masses, as of waves or floods, making up such streams or bodies.'' 547 U.S. at 732 (citing *Webster's New International Dictionary* 2882 (2d ed. 1954)); *see also Riverside Bayview,* 474 U.S. at 131 (characterizing ''waters of the United States'' as ''rivers, streams, and other hydrographic features more conventionally identifiable as 'waters.' ''); *see also* 118 Cong. Rec. 33699 (Oct. 4, 1972) (statement of Sen. Muskie) (referring to ''navigable waters'' as ''water bodies''). According to the *Rapanos* plurality, however, the ordinary meaning of the term ''waters'' does not include areas that are dry most of the year, and which may occasionally contain ''transitory puddles or ephemeral flows of water.'' *See Rapanos,* 547 U.S. at 733.

The agencies are also proposing a definition of ''waters of the United States'' to align with the intent of Congress to broadly interpret the term ''navigable waters'' beyond just commercially navigable-in-fact waters. *See, e.g.,* S. Conf. Rep. No. 92–1236, p. 144 (1972). As proposed, this definition recognizes Congress' intent ''to exercise its powers under the Commerce Clause to regulate at least some waters that would not be deemed 'navigable' under the classical understanding of that term,'' *Riverside Bayview,* 474 U.S. at 133, but at the same time acknowledges ''[t]he grant of authority to Congress under the Commerce Clause, though broad, is not unlimited.'' *SWANCC,* 531 U.S. at 173. The definition also recognizes the constitutional underpinnings of the CWA, which was Congress exercising ''its commerce power over navigation.'' *Id.* at 168 n.3.

This proposal is intended to establish categorical bright lines that provide clarity and predictability for regulators and the regulated community by defining ''waters of the United States'' to include the following: Traditional navigable waters, including the territorial seas; tributaries of such waters; certain ditches; certain lakes and ponds; impoundments of otherwise jurisdictional waters; and wetlands adjacent to other jurisdictional waters. The agencies propose to eliminate the case-by-case application of Justice Kennedy's significant nexus test, proposing instead the establishment of clear categories of jurisdictional waters that adhere to the basic principles articulated in the *Riverside Bayview, SWANCC,* and *Rapanos* decisions while respecting the overall structure and function of the CWA.

A. Traditional Navigable Waters and Territorial Seas

The proposed definition of ''waters of the United States'' would encompass traditional navigable waters, including the territorial seas. Since the passage of the CWA, the first paragraph of the agencies' definition of ''waters of the United States'' has included all waters that are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide. *See, e.g.,* 33 CFR 328.3(a)(1). This paragraph of the 1986 and 2015 regulations encompasses waters that are often referred to as waters more traditionally understood as navigable or ''traditional navigable waters.'' The second paragraph of the 1986 and 2015 regulations lists the territorial seas as jurisdictional. *See id.* To streamline and simplify the definition of ''waters of the United States,'' the agencies propose to include both traditional navigable waters and the territorial seas as a single category of jurisdictional waters. The agencies can think of no instance in which a territorial sea would not also be considered traditionally navigable, and thus the broader term should suffice. The agencies are proposing no other changes to these historically regulated categories of waters.

The agencies note that the term ''territorial seas'' is defined in CWA section 502(8), 33 U.S.C. 1362(8), as ''the belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of three miles.'' The territorial seas establish the seaward limit of ''waters of the United States.'' The agencies are not proposing to replicate this definition in this proposed rule, but request comment on whether adding the definition would improve regulatory clarity.

The agencies interpret traditional navigable waters as all waters that are currently defined in 33 CFR part 329, which implements sections 9 and 10 of the Rivers and Harbors Act, and by numerous decisions of the federal courts, as well as all other waters that are navigable-in-fact. The definition of navigable-in-fact originates with the Supreme Court's decision in *The Daniel Ball,* 77 U.S. 557 (1870). In that case, the Supreme Court stated:

> Those rivers must be regarded as public navigable rivers in law which are navigable in fact. And they are navigable in fact when they are used, or are susceptible of being used, in their ordinary condition, as highways for commerce, over which trade and travel are or may be conducted in the customary modes of trade and travel on water.

In subsequent decisions, the Supreme Court clarified that waters that are navigable-in-fact include waters beyond those capable of navigation by large vessels, *The Montello,* 87 U.S. 430, 441–42 (1874); as well as waters that are not continuously navigable or are not navigable in all seasons, *Economy Light and Power Co.* v. *U.S.,* 256 U.S. 113, 122 (1921); and waters that have never been used in commerce, so long as they are susceptible for use in commerce. *U.S.* v. *Utah,* 283 U.S. 64 (1931); *U.S.* v. *Appalachian Elec. Power Co.,* 311 U.S. 377 (1940). The proposed rule does not modify the text that supports the agencies' longstanding interpretation of ''traditional navigable waters.'' Nonetheless, the pre-proposal recommendations docket received several comments on how to interpret ''traditional navigable waters,'' including comments about what constitutes navigability for purposes of that term and what it means to be ''susceptible to use'' in commerce.

Several pre-proposal commenters, for example, identified confusion in recent years associated with the agencies' interpretation and field implementation of the tests for determining navigability. Those commenters point out that determinations made by the agencies using the *Rapanos* Guidance, and in particular Appendix D to that guidance, may have allowed for the regulation of waters that are not navigable-in-fact within the legal construct established for such waters by the courts. The agencies therefore solicit comment on and request specific examples of where that may be the case. As the agencies consider whether Appendix D is sufficiently clear regarding the regulation of these foundational waters, the agencies solicit comment on whether the existing guidance regarding the scope of traditional navigable waters should be updated to help improve clarity and predictability of the agencies' regulatory program. The agencies also solicit comment on whether the regulation of this category of waters has been or can be clarified

through existing, modified, or new exclusions to the term ''waters of the United States,'' or other regulatory changes.

B. Interstate Waters

1. What are the agencies proposing?

The 1986 regulations define ''waters of the United States'' to include interstate waters, including interstate wetlands. In this proposal, the agencies would remove interstate waters and interstate wetlands as a separate category of ''waters of the United States'' to more closely align the definition to the constitutional and statutory authorities reflected in the CWA and judicial interpretations of the term ''navigable waters,'' while balancing the statute's policy directives to preserve and protect the rights and responsibilities of the States.

2. Why are the agencies proposing this approach?

The agencies have evaluated their earlier legal and policy rationales supporting the inclusion of interstate waters as a separate category of ''waters of the United States'' and are proposing to eliminate the category in this rulemaking. The agencies are concerned that the regulation of interstate waters is a relic of the original Water Pollution Control Act (WPCA) of 1948 and lacks foundation in statutory text. The WPCA stated that the ''pollution of interstate waters in or adjacent to any State or States (whether the matter causing or contributing to such pollution is discharged directly into such waters or reaches such waters after discharge into a tributary of such waters) which endangers the health or welfare of persons in a State other than that in which the discharge originates, is declared to be a public nuisance and subject to abatement as provided by the Act.'' WPCA of 1948, 2(d)(1), (4), 62 Stat. 1155, 1156–57. The statute defined ''interstate waters'' as all rivers, lakes, and other waters that flow across, or form a part of, state boundaries. *Id.* at 10, 62 Stat. 1161.

In 1961, Congress amended the statute to substitute the term ''interstate or navigable waters'' for ''interstate waters.'' *See* Public Law 87–88, 75 Stat. 208 (1961). In 1965, Congress amended the statute to require states to develop water quality standards for all ''interstate waters'' within their borders. *See* Public Law 89–234, 79 Stat. 908 (1965). In 1972, Congress amended the statute again and selected the term ''navigable waters'' as the operative term for the major regulatory programs established by the 1972 amendments, dropping the definition of interstate waters from the statute. *See, e.g.,* 33 U.S.C. 1362(7) (defining ''navigable waters'' as ''waters of the United States''). In doing so, however, Congress allowed the continued enforcement of water quality standards for interstate waters developed by the States under the pre-1972 statutory program. *See* 33 U.S.C. 1313(a).

The EPA promulgated its first regulatory definition for the term ''waters of the United States'' in 1973. 38 FR 13528 (May 22, 1973). In that regulation, the EPA administratively determined that ''interstate waters'' should be a separate category of waters of the United States, distinct from the traditional navigable waters category, and the agencies have retained it as a separate category ever since, including in the 2015 Rule.

The agencies have historically viewed navigable and interstate waters as having distinct and separate meanings because Congress in 1961 identified both in the statute. The agencies have explained their continuing interpretation in part through the doctrine of congressional acquiescence, in that Congress was aware of the EPA's retention of interstate waters as a separate category when amending the CWA in 1977 (making no amendments to remove the agencies' regulatory inclusion of interstate waters), and therefore acquiesced to its inclusion as a separate category. The agencies have also historically relied on two Supreme Court cases (*Illinois* v. *Milwaukee,* 406 U.S. 91 (1972) and *City of Milwaukee* v. *Illinois,* 451 U.S. 304 (1981)), addressing interstate water pollution to further support their position. In the 1972 case, which was decided prior to the date of the 1972 CWA amendments, the Supreme Court referred to the two categories in the disjunctive, implying that the Court viewed the pre-1972 statutory program as encompassing two separate categories. *See Illinois,* 406 U.S. at 102 (''it is federal, not state, law that in the end controls pollution of *interstate or navigable waters*'') (emphasis added). Finally, the agencies historically have referred to section 303(c) of the CWA as further evidence that Congress intended interstate waters to be retained as an independent category of jurisdictional waters because that provision allowed the continuing enforcement of water quality standards for ''interstate waters'' developed following the 1965 amendments. A summary of the agencies' prior legal position with respect to interstate waters was included in a Technical Support Document prepared in support of the 2015 Rule (''2015 Rule TSD'').[25]

The agencies note that when Congress enacted the 1972 CWA amendments, it selected the term ''navigable waters'' to frame the scope of federal regulatory jurisdiction under the Act. To the extent interstate waters were viewed by Congress as a separate and distinct category, the agencies now consider a more natural interpretation of the 1972 amendments to be an express rejection of that category as Congress had before it both options within the scope of the statute it was modifying. Congress specifically did not carry that term forward as the operative phrase for federal jurisdiction. Under basic canons of statutory construction, the agencies begin with the presumption that Congress did so intentionally. *See, e.g., Stone* v. *INS,* 514 U.S. 386, 397 (1995) (''When Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect.'').

Congressional acquiescence is a doctrine of limited application and was specifically rejected as a basis for expansive federal jurisdiction in *SWANCC* in the context of analyzing the Corps' 1977 regulations. *SWANCC,* 531 U.S. at 170–71 (''Although we have recognized congressional acquiescence to administrative interpretations of a statute in some situations, we have done so with extreme care.''). Thus, the agencies are concerned about continuing to rely on congressional acquiescence to their regulatory definitions, *see, e.g.,* 2015 Rule TSD at 219–220, following *SWANCC.*

The legislative history of the 1972 amendments, in fact, suggest that Congress may not have considered interstate waters and navigable waters to be two separate and distinct categories, and instead referred to terms in the pre-1972 statutory regime conjunctively as ''interstate navigable waters.'' S. Rep. No. 92–414, 92nd Cong. 1st Sess., at 2 (Oct. 28, 1971) (''Each State was required by the 1965 Act to develop standards for water quality within its boundaries. These standards were to be applied to all *interstate navigable waters* flowing through the State; intrastate waters were not included.'') (emphasis added); *id.* at 4 (''The setting of water quality standards for *interstate navigable waters* . . . . is the keystone of the present program for control of water pollution'') (emphasis added); *id.*

[25] U.S. EPA and U.S. Army Corps of Engineers. Technical Support Document for the Clean Water Rule: Definition of Waters of the United States (May 2015) (Docket ID: EPA–HQ–OW–2011–0880–20869), *available at https://www.regulations.gov/document?D=EPA-HQ-OW-2011-0880-20869.*

(''The States have first responsibility for enforcement of their standards. When approved by the [EPA], however, the standards for *interstate navigable waters* become Federal-State standards.'') (emphasis added). In 1976, the Supreme Court shared the same view of the pre-1972 statutory scheme: ''Before it was amended in 1972, the Federal Water Pollution Control Act employed ambient water quality standards specifying acceptable levels of pollution in a State's *interstate navigable waters* as the primary mechanism in its program for the control of water pollution.'' *EPA* v. *California,* 426 U.S. 200, 202 (1976) (emphasis added). This history suggests at a minimum that the section 303(a) provision relating to existing water quality standards for ''interstate waters'' may be referring to ''interstate navigable waters,'' not interstate waters more broadly, at least with respect to continuing federal enforcement authority over the pre-existing standards.

Neither Supreme Court case historically relied on by the agencies, as discussed in the 2015 Rule TSD, addressed the specific question of whether interstate waters and navigable waters are separate and distinct categories of jurisdictional waters under the CWA. They instead addressed interstate water pollution generally, and the water at issue in those cases was Lake Michigan, an interstate navigable-in-fact water. The 1981 decision, however, did recognize that the 1972 amendments ''were viewed by Congress as a 'total restructuring' and 'complete rewriting' of the existing water pollution legislation considered in that case. *Milwaukee,* 451 U.S. at 317 (citing legislative history of the 1972 CWA amendments). This would support the notion that prior iterations of the statute, referring to both interstate waters and navigable waters, were replaced with a completely new program in 1972, not that certain aspects of that program continued through congressional acquiescence of a later regulatory determination.

The agencies therefore propose to eliminate ''interstate waters'' as a separate category of ''waters of the United States.'' Nothing in the legislative history of the 1972 CWA amendments ''signifies that Congress intended to exert anything more than its commerce power over navigation.'' *SWANCC,* 531 U.S. at 168 n.3. By proposing to eliminate a separate category for interstate waters, the proposed rule adheres to the agencies' legal principles discussed in Section II by including within the definition of ''waters of the United States'' traditional navigable waters, the territorial seas, and waters subject to the ebb and flow of the tide; tributaries to such waters; certain ditches that operate more like traditional navigable waters or were excavated in tributaries or adjacent wetlands; certain lakes and ponds; impoundments of otherwise jurisdiction waters; and wetlands adjacent to jurisdictional waters. Because the agencies' authority flows from Congress' use of the term ''navigable waters'' in the CWA, the agencies lack authority to regulate waters untethered from that term. Therefore, those interstate waters that would satisfy the definitions in this proposed rule would be jurisdictional; interstate waters without any connection to traditional navigable waters would be more appropriately regulated by the States and Tribes under their sovereign authorities.

The agencies recognize that this proposal marks a shift away from prior agency positions. In doing so, however, the agencies anticipate that most waters that would be deemed jurisdictional under the existing regulatory definition from the 1980s would likely remain jurisdictional under this proposal as they would likely fall within the proposed traditional navigable waters category or one of the other proposed categories, such as tributaries or lakes and ponds. The agencies note that this proposal likely would reduce the number of interstate waters that would be jurisdictional under the 2015 Rule given that rule's broad interpretation of the term ''neighboring'' within its ''adjacent'' definition and its inclusion of ephemeral streams and related features meeting its ''tributary'' definition. The agencies, however, are not aware of any database that identifies the jurisdictional status of interstate waters based solely on the fact that they cross state lines or any other resource that would identify these waters and therefore lack the analytical ability to perform a comparative analysis with precision.

3. What are specific issues upon which the agencies are seeking comment?

The agencies welcome comment on this proposed change, including the rationale for and against having interstate waters as a separate jurisdictional category. Alternatively, the agencies seek comment on an approach that would retain interstate waters as a separate category, reflecting longstanding agency practice. In the event the agencies were to pursue that alternate approach, the agencies solicit comment on which waters should remain jurisdictional and on what basis, and whether the term ''interstate'' should be interpreted as crossing between States, between States and tribal lands, between States and/or tribal lands and foreign countries, or other formulations. Finally, if a commenter believes that the agencies have in the past asserted jurisdiction over waters based solely on the fact that such waters were interstate and otherwise not connected to a traditional navigable water, the agencies solicit examples of such jurisdictional determinations or other available data that may allow the agencies to further analyze the differences between the 1986 and 2015 rules and this proposed rule.

C. Impoundments

The agencies do not propose to make any changes to the impoundment category of ''waters of the United States'' as it existed in the 1986 regulations. Impoundments have historically been determined by the agencies to be jurisdictional because impounding a ''water of the United States'' generally does not change the water body's status as a ''water of the United States.'' *See, e.g., S. D. Warren Co.* v. *Maine Board of Environmental Protection,* 547 U.S. 370, 379 n.5 (2006) (''[N]or can we agree that one can denationalize national waters by exerting private control over them.''). Under this proposal, alteration of a ''water of the United States'' by impounding it would not change the water's jurisdictional status, consistent with longstanding agency practice, unless jurisdiction has been affirmatively relinquished.

Most impoundments do not cut off a connection between upstream tributaries and a downstream traditional navigable water or territorial sea. As a result, the agencies would consider tributaries upstream of an impoundment to be tributaries to downstream jurisdictional waters even where the impoundment might impede the flow of water. Impoundments therefore may serve as one of the waters through which tributaries flow to a traditional navigable water or territorial sea. However, where discharge of dredged or fill material into a ''water of the United States'' transforms a water body into upland through a section 404 permitting action, the water would no longer be jurisdictional, consistent with longstanding agency practice.

During the agencies' pre-proposal outreach, most commenters supported a policy under which impoundments of waters of the United States remain jurisdictional, while some commenters argued that impoundments that do not remain hydrologically connected to a traditional navigable water should not

be jurisdictional. The agencies welcome comment on whether impoundments are needed as a separate category of ''waters of the United States,'' or whether the other categories of waters in this proposed rule effectively incorporate the impoundment of other jurisdictional waters, such as the lakes and ponds category. The agencies also seek comment on whether there are existing jurisdictional impoundments that would not be found jurisdictional under an alternate approach that would remove impoundments as a separate category of ''waters of the United States.'' The agencies also welcome comment on whether certain categories of impoundments should not be jurisdictional, such as certain types of impoundments that release water downstream only very infrequently or impede flow downstream such that the flow is less than intermittent. An impounded wetland frequently becomes a pond, and the agencies solicit comment as to whether that pond should remain jurisdictional even if, for example, it does not meet the elements of the lakes and ponds category under paragraph (a)(4) in this proposed rule, such as contributing perennial or intermittent flow to an (a)(1) water. The agencies solicit comment on these and any other aspects of the proposed impoundment category.

D. Tributaries

1. What are the agencies proposing?

In this proposed rule, the agencies would retain tributaries as a category of jurisdictional waters subject to CWA jurisdiction. This proposed rule defines ''tributary'' to mean a river, stream, or similar naturally occurring surface water channel that contributes perennial or intermittent flow to a traditional navigable water or territorial sea in a typical year either directly or indirectly through other jurisdictional waters, such as other tributaries, impoundments, and adjacent wetlands or through water features identified in paragraph (b) of this proposal so long as those water features convey perennial or intermittent flow downstream. Excluded waters and features in this proposal are not tributaries, but certain excluded waters and features may convey perennial or intermittent flow from a tributary to traditional navigable waters or the territorial seas. For example, if a tributary flows into an excluded ditch or a waste treatment system and those excluded features convey perennial or intermittent flow to a tributary downstream, the tributary remains a jurisdictional tributary upstream and downstream of the excluded feature. However, certain excluded waters and features are incapable of providing perennial or intermittent flow as defined in this proposal (*e.g.,* ephemeral features) and therefore break jurisdiction upstream of the excluded feature. Under the proposed definition, a tributary does not lose its status as a jurisdictional tributary if it flows through a culvert, dam, or other similar artificial break or through a debris pile, boulder field, or similar natural break so long as the artificial or natural break conveys perennial or intermittent flow to a tributary or other jurisdictional water at the downstream end of the break. The alteration or relocation of a tributary would not modify its status as a jurisdictional tributary as long as it continues to satisfy the elements of the tributary definition.

Regardless of the name they are given locally (*e.g.,* creek, bayou, branch, brook, run, etc.), or their size (*e.g.,* discharge volume, width, depth, stream order, etc.), waters that meet the definition of ''tributary'' would be jurisdictional under this proposed rule. However, tributaries as defined in this proposal do not include surface features that flow only in direct response to precipitation, such as ephemeral flows, dry washes, arroyos, and similar features. These features lack the required perennial or intermittent flow regimes to satisfy the tributary definition under this proposal and therefore would not be jurisdictional.

Though ''perennial,'' ''intermittent,'' and ''ephemeral'' are commonly used scientific terms, the agencies are proposing to provide definitions of these terms for purposes of CWA jurisdiction to ensure that the regulation is clear. The agencies propose to define the term ''perennial'' to mean surface water flowing continuously year-round during a typical year. The proposed definition of ''intermittent'' is surface water flowing continuously during certain times of a typical year, not merely in direct response to precipitation, but when the groundwater table is elevated, for example, or when snowpack melts. Continuous surface flow during certain times of the year may occur seasonally such as in the spring when evapotranspiration is low and the groundwater table is elevated. Under these conditions, the groundwater table intersects the channel bed and groundwater provides continuous baseflow for weeks or months at a time even when it is not raining or has not very recently rained. The term ''snowpack'' in this definition is proposed as ''layers of snow that accumulate over extended periods of time in certain geographic regions and high altitudes (*e.g.,* in northern climes and mountainous regions).'' Melting snowpack can be the sole or primary source of perennial or intermittent flow in tributaries. The agencies recognize that perennial or intermittent flow in certain mountain streams, for example, may result primarily from melting snowpack, not groundwater contributions to the channel.

The phrase ''certain times of a typical year'' is intended to include extended periods of predictable, continuous, seasonal surface flow occurring in the same geographic feature year after year. The agencies are not proposing a specific duration (*e.g.,* the number days, weeks, or months) of surface flow that constitutes intermittent flow as the agencies believe the time period that encompasses intermittent flow can vary widely across the country based upon climate, hydrology, topography, soils, and other conditions. ''Typical year'' is defined in the proposed rule to mean within the normal range of precipitation over a rolling thirty-year period for a particular geographic area. Under this proposed definition, a typical year would generally not include times of drought or extreme flooding. The term ''ephemeral'' in the proposal means surface water flowing or pooling only in direct response to precipitation, such as rain or snow fall. The agencies intend to distinguish flow resulting from snow fall from sustained flow resulting from melting snowpack in these definitions.

Under the proposed rule a tributary must contribute perennial or intermittent flow to a traditional navigable water or territorial sea in typical year. Perennial or intermittent flow would require some form of discrete and confined flow (as opposed to diffuse overland flow) forming geographic features such as rivers, streams, or similar naturally occurring surface water channels. A tributary may contribute perennial or intermittent flow to downstream traditional navigable waters through, for example, lakes, impoundments, adjacent wetlands, or other tributaries. Under the proposed rule, when a tributary flows through a wetland and into another tributary (sometimes called a ''run-of-stream'' wetland), the tributary would remain jurisdictional even though it may be difficult to identify channelized flow through the wetland. Similarly, such a wetland would be considered ''adjacent'' and thus jurisdictional under this proposal given the wetland abuts (*i.e.,* touches at a point in this case) the tributary. In the case of a perennial or intermittent stream which flows through ditches excluded from this proposed definition of ''waters of the United

States,'' the non-jurisdictional ditches would not sever jurisdiction under the proposed rule as long as the ditches convey perennial or intermittent flow to tributaries or other jurisdictional waters at the downstream end of the ditch. However, a perennial or intermittent stream that flows into a non-jurisdictional ephemeral feature would not meet the definition of ''tributary'' if the perennial or intermittent flow does not reach a traditional navigable water or territorial sea; the ephemeral feature would sever jurisdiction for such perennial and intermittent streams as it does not convey surface water year-round or continuously for extended periods of time to a traditional navigable water or territorial sea.

Under the proposed rule, tributaries could have certain natural breaks (such as debris piles, boulder fields, or subterranean rivers) or man-made breaks (such as bridges, culverts, pipes, or dams) and remain a tributary. A tributary does not lose its status as a tributary according to this proposal if it flows through a natural or man-made break so long as the break conveys perennial or intermittent flow to a tributary or other jurisdictional water at the downstream end of the break. To implement the proposed tributary definition, the agencies would consider the upstream extent of a tributary to be the point at which the feature ceases to contribute perennial or intermittent flow to a traditional navigable water or territorial sea.

The alteration or relocation of a tributary would not modify its status under the proposed definition of tributary as long as it continues to satisfy the elements of the definition. The agencies' longstanding interpretation of the CWA is that tributaries that are modified waters are jurisdictional, and the agencies are not proposing to change this interpretation. If a tributary is channelized, its bed and/or banks are altered in some way, or it is re-routed or its flow regime is modified, then it would remain jurisdictional under the proposed rule as long as it continues to meet the definition of ''tributary.'' For example, streams that have been channelized with hardened banks or otherwise modified may still meet the definition of ''tributary'' under the proposal.

2. Why are the agencies proposing this approach?

The agencies' proposed definition of ''tributary'' reflects the authority granted by Congress to regulate navigable waters, the interconnected nature of the tributary system, as well as the ordinary meaning of the term ''waters,'' an adherence to constitutional and statutory authority regarding the role of the Federal government and limits on its authority to regulate the use of land and waters within State and tribal boundaries, and the agencies' goal to establish a clear and easily implementable definition. In the proposed definition of ''tributary,'' the agencies would set boundaries to the scope of the regulation to ensure it is consistent with the role of the Federal government under the Constitution and the CWA. As the Supreme Court recognizes, States traditionally exercise ''primary power over land and water use,'' *SWANCC,* 531 U.S. at 174. The Federal government should avoid pressing against the outer limits of its authority when doing so would infringe upon the traditional rights and responsibilities of States to manage their own waters. *See SWANCC,* 531 U.S. at 172–73 and *supra* Section III.A.

Limiting the scope of the proposed ''tributary'' definition to perennial or intermittent fixed waterbodies that contribute flow to traditional navigable waters or the territorial seas, including through other jurisdictional waters and through certain excluded waters and features, would also provide clear and predictable jurisdictional boundaries to guide the agencies and the regulated community. By proposing to define perennial and intermittent tributaries of traditional navigable waters as jurisdictional and ephemeral features as non-jurisdictional, the agencies seek to balance Congress' intent to interpret the term ''navigable waters'' broadly, *see, e.g.,* S. Conf. Rep. No. 92–1236, p. 144 (1972), with the notion that nothing in the legislative history of the Act ''signifies that Congress intended to exert anything more than its commerce power over navigation.'' *SWANCC,* 531 U.S. at 168 n.3. The agencies believe that limiting jurisdiction to perennial and intermittent streams most appropriately balances the Federal government's interest in regulation the nation's navigable waters while respecting State land use authority over features that are only episodically wet following precipitation events.

By including rivers and streams that contribute perennial or intermittent flow to traditional navigable waters or the territorial seas, and excluding ephemeral features, the agencies are proposing a definition of ''tributary'' that is consistent with the *Rapanos* plurality's position that '' 'the waters of the United States' include only relatively permanent, standing, or flowing bodies of waters'' . . . ''as opposed to ordinarily dry channels'' . . . ''or ephemeral flows of water.'' *Id.* at 732–33 *see also id.* at 736 n.7 (''[R]elatively continuous flow is a *necessary* condition for qualification as a 'water,' not an *adequate* condition'' (original emphasis)). Perennial waters, by definition, are permanent. And while the plurality did note that ''waters of the United States'' do not include ''ordinarily dry channels through which water occasionally or intermittently flows,'' *id.* at 733, the plurality would ''not necessarily exclude *seasonal* rivers, which contain continuous flow during some months of the year but no flow during dry months.'' *Id.* at 732 n.5 (original emphasis); *compare id.* at 770 (Kennedy, J., concurring) (''an intermittent flow can constitute a stream . . . while it is flowing . . . [i]t follows that the Corps can reasonably interpret the Act to cover the paths of such impermanent streams''). Intermittent waters may occur seasonally, for example, during times when groundwater tables are elevated or when snowpack runoff produces relatively permanent flow, returning on an annual basis in known, fixed geographic locations.

Pre-proposal commenters provided various definitions for perennial flow, including streams which flow continually or which flow for twelve months of the year other than times of extreme drought. Several commenters recommended that the agencies only include tributaries with perennial flow, suggesting that they would broadly protect water quality and provide a clear line regarding federal jurisdiction without being overly expansive. Some stakeholders recommended the agencies include waters that receive water from a spring or other surface source, such as melting snow. Others recommended including ephemeral features and washes in the definition of ''tributary'' and relying on physical features of a stream (*e.g.,* bed and banks and ordinary high water mark) regardless of flow. Many pre-proposal commenters recommended the agencies propose a bright line to distinguish between intermittent and ephemeral flow regimes. A few commenters suggested specific timeframes for the flow requirement to be a tributary, such as 185 days, with most recommending three continuous months of the year. Several States submitted comments during the Federalism consultations recommending a regionalized approach to flow regime, whereby the agencies could provide regional manuals with examples of jurisdictional flow regimes in various parts of the country or some other mechanism to recognize regional differences in waters. The agencies have

considered these comments and have crafted proposed regulatory definitions designed to address a broad array of interests, while adhering to the legal principles articulated in this notice and while providing a predictable, implementable regulatory framework.

By proposing to define ''tributary'' as rivers and streams that contribute perennial or intermittent flow to traditional navigable waters or the territorial seas, the agencies would establish that a mere hydrologic connection cannot provide the basis for CWA jurisdiction; the bodies of water must be ''geographical features'' (*i.e.,* rivers and streams) that are ''relatively permanent'' (*i.e.,* perennial or intermittent) and that contribute perennial or intermittent flow to a traditional navigable water. *Id.* at 732. This proposed requirement is informed by *Rapanos* wherein the plurality determined that the phrase ''the waters of the United States'' ''cannot bear the expansive meaning that the Corps would give it,'' *id.* at 732, and challenged the notion that ''even the most insubstantial hydrologic connection may be held to constitute a 'significant nexus.' '' *Id.* at 728. Similarly, Justice Kennedy noted, ''mere hydrologic connection should not suffice in all cases; the connection may be too insubstantial for the hydrologic linkage to establish the required nexus with navigable waters as traditionally understood.'' *Id.* at 784–85. On the other hand, Justice Kennedy challenged the plurality's requirement that a channel contain ''continuous flow,'' asserting ''[t]he merest trickle, if continuous, would count as a 'water' subject to federal regulation'' under the plurality's test.'' *Id.* at 769. The proposed requirement that a tributary be connected to a traditional navigable water by perennial or intermittent flow also reflects the plurality's description of a '' 'wate[r] of the United States' '' as ''*i.e.,* a relatively permanent body of water connected to traditional interstate navigable waters.'' *Id.* at 742.

The agencies acknowledge the proposed tributary definition contains no flow volume requirement, but only a flow duration requirement of perennial or intermittent flow. The agencies believe establishing a specific flow volume requirement for all tributaries would be inappropriate given the wide spatial and temporal variability of flow volume in rivers and streams across the country. While the proposed definition may in certain instances assert jurisdiction over bodies of water contributing ''the merest trickle'' to a traditional navigable water, the agencies believe that regardless of flow volume, such bodies are '' 'waters' in the ordinary sense of containing a relatively permanent flow.'' *Id.* at 757. As described in the agencies' *Rapanos* Guidance, the agencies currently conduct a significant nexus analysis for certain types of waters referred to as ''non-relatively permanent waters,'' which includes ephemeral features and some intermittent streams. *See Rapanos* Guidance at 7 (" '[R]elatively permanent' waters do not include ephemeral tributaries which flow only in response to precipitation and intermittent streams which do not typically flow year-round or have continuous flow at least seasonally. However, CWA jurisdiction over these waters will be evaluated under the significant nexus standard[.]''). This proposed definition of ''tributary'' would replace existing procedures that may depend on case-specific ''significant nexus'' analyses of the relationship between a particular stream with downstream waters. The agencies are proposing to eliminate this case-specific ''significant nexus'' analysis by providing a clear definition of ''tributary'' that is easier to implement. Indeed, Justice Kennedy's ''significant nexus'' test for wetlands adjacent to nonnavigable tributaries was only needed ''absent more specific regulations,'' *Rapanos,* 547 U.S. at 782, because ''the breadth of [the Corps' existing tributary] standard'' . . . ''seems to leave wide room for regulation of drains, ditches, and streams remote from any navigable-in-fact water and carrying only minor water volumes towards it'' and thus ''precludes its adoption as the determinative measure of whether adjacent wetlands are likely to play an important role in the integrity of an aquatic system comprising navigable waters as traditionally understood.'' *Id.* at 781. In light of the ''more specific [tributary] regulations'' proposed today, the agencies propose to eliminate the case-specific significant nexus review through categorical treatment of all tributaries, as defined by this proposal, as ''waters of the United States.'' In doing so, the agencies believe they avoid interpretation of the CWA that raise significant constitutional questions. *See Rapanos* 547 U.S. at 738 (plurality) (''Even if the term 'the waters of the United States' were ambiguous as applied to channels that sometimes host ephemeral flows of water (which it is not), we would expect a clearer statement from Congress to authorize an agency theory of jurisdiction that presses the envelope of constitutional validity.'').

The agencies recognize that this is a departure from prior positions of the Federal government. The agencies also recognize that some courts apply the significant nexus standard articulated in Justice Kennedy's opinion as the exclusive test of CWA jurisdiction over certain waters. But the agencies believe that this proposed definition incorporates the important aspects of Justice Kennedy's opinion, together with the plurality, to craft a clear and implementable definition that stays within our statutory and constitutional mandates. The agencies request comment on this interpretation, and on whether the agencies have previously overread Justice Kennedy's opinion to mandate the significant nexus test outside the actual holding of Justice Kennedy's opinion, which was limited to the wetlands at issue in that case.

The proposed definition of ''waters of the United States'' is a legal and policy decision informed by the statute, its legislative history, Supreme Court interpretations, and the agencies' respect for the traditional power of States to regulate their land and water resources. This proposed definition is also informed by the science. As part of the rulemaking effort leading up to the promulgation of the 2015 Rule, the EPA's Office of Research and Development developed a report entitled ''Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence'' (''Connectivity Report'').[26] The report reviews more than 1,200 peer-reviewed publications and summarizes the current scientific understanding about the connectivity and mechanisms by which streams and wetlands affect the physical, chemical, and biological integrity of downstream waters. Before the Connectivity Report was finalized, the EPA released a draft version of it in September 2013 (''Draft Connectivity Report'').[27] The Draft Connectivity Report was reviewed by the EPA's Science Advisory Board (''SAB''), a public advisory group tasked with providing scientific information and advice to EPA. In October 2014, the SAB completed its peer review (''SAB Review'') of the Draft Connectivity Report. While the SAB found that ''[t]he literature review provides strong

[26] U.S. EPA. *Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence* (Final Report). U.S. Environmental Protection Agency, Washington, DC, EPA/600/R–14/475F, 2015.

[27] U.S. EPA. *Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence (External Review Draft).* U.S. Environmental Protection Agency, Washington, DC, EPA/600/R11/098B, September 2013.

scientific support for the conclusion that ephemeral, intermittent, and perennial streams exert a strong influence on the character and functioning of downstream waters and that tributary streams are connected to downstream waters,'' at the same time the SAB stressed that ''the EPA should recognize that there is a gradient of connectivity.'' [28] The SAB recommended that ''the interpretation of connectivity be revised to reflect a gradient approach that recognizes variation in the frequency, duration, magnitude, predictability, and *consequences* of physical, chemical, and biological connections.'' [29]

To describe the ''connectivity gradient'' and the probability that impacts occurring along the gradient will be transmitted downstream, the SAB developed a figure as part of its review of the Draft Connectivity Report. *See* SAB Review fig. 3 at 54. The figure illustrates the connectivity gradient and potential consequences between perennial, intermittent, and ephemeral streams and downstream waters and depicts a decreased ''probability that changes . . . . will be transmitted to downstream waters'' at flow regimes less than perennial and intermittent. In other words, the SAB found perennial and intermittent streams have a greater probability to impact downstream waters compared to ephemeral streams. While the SAB stated that ''at sufficiently large spatial and temporal scales, all waters and wetlands are connected,'' it found that ''[m]ore important are the degree of connection (*e.g.,* frequency, magnitude, timing, duration) and the extent to which those connections affect the chemical, physical, and biological integrity of downstream waters.'' *Id.* at 17.

At the same time, the SAB recognized that ''[t]he Report is a science, not policy, document that was written to summarize the current understanding of connectivity or isolation of streams and wetlands relative to large water bodies such as rivers, lakes, estuaries, and oceans.'' *Id.* at 2. ''The SAB also recommended that the agencies clarify in the preamble to the final rule that 'significant nexus' is a legal term, not a scientific one.'' 80 FR 37065. And in issuing the 2015 Rule, the agencies stated, ''the science does not provide a precise point along the continuum at which waters provide only speculative or insubstantial functions to downstream waters.'' *Id.* at 37090. Thus, the agencies use the Connectivity Report to inform certain aspects of this proposed definition of ''waters of the United States,'' such as recognizing the ''connectivity gradient'' and potential consequences between perennial, intermittent, and ephemeral streams and downstream waters within a tributary system, but acknowledge that science cannot be used to draw the line between Federal and State waters, as those are legal distinctions that have been established within the overall framework and construct of the CWA.

This proposed tributary definition identifies a category of perennial and intermittent rivers and streams that due to their relatively permanent flow regime and their contribution of flow to navigable waters should be federally regulated. Through this proposed definition of ''tributary,'' the agencies would also acknowledge the policy direction from Congress to ''recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution [and] to plan for the development and use (including restoration, preservation, and enhancement) of land and water resources . . . .'' 33 U.S.C. 1251(b); *see also Rapanos,* 547 U.S. at 737 (Scalia, J., plurality). The proposed approach to defining ''tributary'' is also intended to limit federal jurisdiction over ephemeral flows and other ordinarily dry land features in order to ''preserve, and protect the primary responsibilities and rights of States to . . . plan the development and use . . . of land . . . resources.'' *See id.* at 738 (Scalia, J., plurality) (''Regulation of land use, as through the issuance of the development permits sought by petitioners in both [*Rapanos* and *Carabell*], is a quintessential state and local power.''). With the proposed definition, the agencies seek to avoid ''impairing or in any manner affecting any right or jurisdiction of the States with respect to waters (including boundary waters) of such States.'' 33 U.S.C. 1370. In addition, the agencies are drawing a line between intermittent and ephemeral flows for administrative efficiency as they balance the law, science, and stakeholder feedback. Therefore, ephemeral features, such as dry washes and arroyos, that lack the required perennial or intermittent flow regime necessary to satisfy the tributary definition under this proposed rule are excluded from the definition. However, an ephemeral feature may constitute a point source that discharges pollutants to a ''water of the United States.'' *See Rapanos,* 547 U.S. at 743–44 (Scalia, J., plurality). States and Tribes may also address ephemeral features as ''waters of the State'' or ''waters of the Tribe'' under their own laws to the extent they deem appropriate.

3. How might the agencies implement this approach?

The agencies and our co-regulators have significant experience identifying flow regime in perennial and intermittent waters and expect that landowners will have also sufficient knowledge to understand how water moves throughout their properties. Moreover, the technical consultants that support the permitting and development community will be familiar with the basic concept of perennial and intermittent flow regimes. The agencies, however, have identified several potential implementation methods and tools that could be used to identify and distinguish perennial and intermittent flow regimes from ephemeral flow regimes as defined in this proposal. In conjunction with a field visit, such methods could include remote and field-based tools, such as visual observations, photographs, data collection on flow, trapezoidal flumes and pressure transducers for measuring surface flow and comparing that to rainfall, StreamStats by the U.S. Geological Survey (USGS) (available at *https://streamstats.usgs.gov/ss/*), Natural Resources Conservation Service (NRCS) hydrologic tools and soil maps, desktop tools that provide for the hydrologic estimation of a discharge sufficient to generate intermittent or perennial flow, such as a regional regression analysis or hydrologic modeling, USGS topographic data, or modeling tools using drainage area, precipitation data, climate, topography, land use, vegetation cover, geology, and other publicly available information. There may be other methods which could be researched and developed by the agencies over time, including the identification of field indicators, such as vegetation and macroinvertebrates, which could be regionalized (for example, the Streamflow Duration Assessment Method for the Pacific Northwest, at *http://www.epa.gov/measurements/streamflow-duration-assessment-method-pacific-northwest,* which could be expanded to other regions).

During the agencies' Federalism consultation, a few States recommended the agencies identify a variety of methods which may be employed to identify flow regimes, and that such methods involve tools readily available to a typical landowner. Some other States recommended not using the

[28] Letter to Gina McCarthy. October 17, 2014. SAB Review of the Draft EPA Report Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence. Page 3.

[29] *Id.* at 2 (emphasis added).

National Hydrography Dataset (NHD) because they commented that it has been shown to overestimate flow in certain areas. Some States recommended using local flow data collected and maps developed by government agencies, where available. Climatic conditions and precipitation data are important elements to consider when determining flow regime given the dependent relationship in many systems between surface flow and groundwater tables. For example, observing flow directly after a large rainfall may not be a good indicator of a stream's typical flow regime, while observing flow in a stream in the middle of summer in the arid West when no recent rainfall has occurred may be a good indication that it flows more than ephemerally. Often multiple data points and multiple sources of information could be used to determine flow regime.

The same tools discussed above can also be helpful in establishing the presence of a tributary. For example, where a USGS topographic map and/or NHD data display a ''blue line stream,'' there is an indication of a potential tributary. Combining this information with stream order can yield greater certainty. For example, higher order streams will generally be more likely to exhibit relatively permanent flow compared to lower order streams. This information will vary in validity in different parts of the country, so care would be taken to evaluate additional information prior to reasonably concluding a tributary is present. Supporting information, as well as field work, should also be used to conclude the presence of a tributary. Other reliable methods that can indicate existence of a tributary include stream gage data, elevation data, spillway height, historic water flow records, flood predictions, statistical evidence, and direct observation. Also, the agencies recognize that States may have specific, validated tools they employ to identify perennial or intermittent streams or flow regimes and are soliciting comment on those approaches which may be useful for application in this proposed rule. The agencies also solicit comment on other implementation tools available to determine the flow regime of a river or stream and its contribution of flow to a traditional navigable water.

To determine whether the year in question is a ''typical year,'' the agencies presently use observed rainfall amount and compare it to tables developed by the Corps using data from the National Oceanic and Atmospheric Administration (NOAA). The agencies consider a year to be ''typical'' when the observed rainfall from the previous three months falls within the 30th and 70th percentiles established by a 30-year rainfall average generated at NOAA weather stations. A typical year would generally not include times of drought or extreme floods. A rolling 30-year period would account for variability to provide a reliable indicator of the climate in a given geographic area without being confounded by a year or two of unusual climate data for the given area. The geographic area proposed to be used by the agencies would be on a watershed-scale basis to ensure specific climatic data are representative of the landscape in relation to the feature under consideration for meeting the tributary definition.

Other potential data sources for obtaining relevant information to determine typical year could include one or several of the following: the Web-based Water-Budget Interactive Modeling Program (WebWIMP) for approximate dates of wet and dry seasons for any terrestrial location based on average monthly precipitation and estimated evapotranspiration (*http://climate.geog.udel.edu/~wimp/*); WETS tables (or similar tools) which are provided by the NRCS National Water and Climate Center (*http://www.wcc.nrcs.usda.gov/climate/wetlands.html*) and are calculated from long-term (30-year) weather records gathered at National Weather Service; meteorological stations; or by examining trends in drought indices, such as the Palmer Drought Severity Index (PDSI) (Sprecher and Warne 2000), where time-series plots of PDSI values by month or year are available from the National Climatic Data Center (*http://www.ncdc.noaa.gov/oa/climate/onlineprod/drought/xmgr.html#ds*). The agencies are not proposing to codify specific tools or resources in the regulation to determine a ''typical year.''

Sources of information on ''snowpack'' can be found in the NOAA national snow analyses maps (*https://www.nohrsc.noaa.gov/nsa/*), Natural Resources Conservation Service sources (*https://www.wcc.nrcs.usda.gov/snow/*), or by using hydrographs of subject locations as a potential guide to alert the regulated public and regulators as to which regions of the country have to consider snowpack scenarios. In these regions, for example, a hydrograph could indicate a large increase in discharge volume due to the late spring/early summer thaws of melting snowpack. Such indications are a regular, predictable, seasonal occurrence of flow. The large water contribution source for those northern and mountainous geographic regions which do not have significant elevation changes but which do have a consistent, predictable snowfall that accumulates on the ground for extended periods of time would be covered in a proposed definition of ''snowpack.''

4. What are specific issues upon which the agencies are seeking comment?

While the public may comment on all aspects of the agencies' proposed rule, the agencies have identified several specific areas related to the proposed tributary definition for which they seek comment. As a threshold matter, the agencies solicit comment on their interpretation of the *Rapanos* opinions and whether the significant nexus standard, articulated by a single justice, must be a mandatory component of any future definition of ''waters of the United States.'' Or, may the agencies apply the principles and rationale of the plurality and concurring opinions to craft a new standard established by rule?

The agencies also solicit comment on whether the definition of ''tributary'' should be limited to perennial waters only. The agencies also request comment whether the definition of ''tributary'' as proposed should indicate that the flow originate from a particular source, such as a requirement for groundwater interface, snowpack, or lower stream orders that contribute flow. The agencies also solicit comment on how effluent-dependent streams (*e.g.,* streams that flow year-round based on wastewater treatment plant discharges) should be treated under the tributary definition. As proposed, effluent-dependent streams would be included in the definition of ''tributary'' as long as they contribute perennial or intermittent flow to a traditional navigable water or territorial sea in a typical year.

The agencies also solicit comment on whether the tributary definition should include streams that contribute less than intermittent flow to a traditional navigable water or territorial sea in a typical year. Additionally, the agencies request comment on whether less than intermittent flow in a channel breaks jurisdiction of upstream perennial or intermittent flow and under what conditions that may happen. The agencies recognize that the proposed definition may present a challenge for certain landowners upstream of an ephemeral feature. For example, landowners may find it difficult to determine whether there is a jurisdictional break downstream of a feature on their property. The agencies therefore solicit comment on this issue.

The agencies also seek comment on the proposed treatment of natural and man-made breaks regarding the jurisdictional status of upstream waters, including whether these features can convey perennial or intermittent flow to downstream jurisdictional waters. The agencies also seek comment on the jurisdictional status of the breaks themselves.

The agencies are also soliciting comment on an alternate definition that would change the focus of the proposed definition from intermittent flow occurring during certain times of the year to ''seasonal flow.'' Under this alternative definition, a tributary would be a river, stream, or similar naturally occurring surface water channel that contributes flow at least seasonally to a traditional navigable water or territorial sea in a typical year. The alternate definition could add that ''seasonal flow is predictable, continuous surface flow that generally occurs at the same time in a typical year.'' The agencies welcome comments on the concept of a ''seasonal'' flow regime, what that term may include, and how it may be implemented, including tools to identify ''seasonal'' flow.

As an alternative to the proposed definition of ''intermittent,'' the agencies are soliciting comment on whether the term could instead mean ''water flowing continuously during certain times of a typical year as a result of melting snowpack or when the channel bed intersects the groundwater table.'' Although the identification of groundwater input is found in most definitions for intermittent flow,[30] the agencies note that identifying whether the channel bed intersects the groundwater table may be challenging to accomplish in the field, that gathering the relevant data could be time consuming, and could require new tools and training of field staff and the regulated public. Some options for identifying whether groundwater is providing a source of water to the tributary may involve the installation of monitoring wells or staff gauges to identify the presence of the water table and/or to estimate the base flow using a hydrograph. Identifying the appropriate depth of installation for a monitoring well can be challenging, especially in the case of intermittent streams that have seasonally fluctuating water tables. Installing these devices in certain substrates, such as rocky substrates, can also be challenging. There may be other methods which could be researched and developed by the agencies over time, including the identification of field indicators, which could be regionalized, as well as the development of modeling tools. However, both of these methods (field indicators and modeling tools) would only provide an indication of groundwater generated base flow and would not directly measure its presence. The agencies are soliciting comment on whether these or other methods may be most appropriately used to identify groundwater in the field.

The agencies are also soliciting comment on whether the definition of ''intermittent'' should contain the requirement of continuous flow for a specific duration, such as ''at least one month of the calendar year,'' instead of the phrase ''during certain times of a typical year.'' *See, e.g.,* 30 CFR 710.5 (definition of ''intermittent'' used in a U.S. Department of the Interior regulation). The agencies note that such an approach would provide for national consistency but may not offer a more regionalized implementation of intermittent tributaries as some States recommended (*i.e.,* intermittent would be viewed the same across the country, from the arid West to the Southeast). Some pre-proposal commenters recommended this approach to provide certainty for determining flow regime. The agencies are also soliciting comment on whether the seasonal continuous surface flow consideration (*e.g.,* typically three months) from the *Rapanos* Guidance could be used as a definitional flow regime in the regulation. *Rapanos* Guidance at 6. Several commenters recommended this approach be used to define tributaries. The seasonal ''typically three month'' approach is current practice, subject to case-by-case analysis, and is therefore familiar to agency staff and the regulated public, but like a one-month limitation, it may not provide for regional variation in the implementation of flow regime.

The agencies therefore seek comment as to whether the tributary definition should include specific flow characteristics (*e.g.,* timing, duration, frequency, or magnitude), and if so, what flow values or ranges of values (including supporting rationale) would satisfy the tributary definition and what methods, tools, or data could be used to determine such values. Certain flow requirements might include, for example, an average annual flow volume of five or more cubic feet per second in a typical year and/or that a river or stream flow continuously for a certain number of days (*e.g.,* 30, 60, or 90 days) in a typical year.

The agencies are also soliciting comment on whether the concepts of bed and banks and ordinary high water mark should be added to the definition of tributary, and if so, how. Several commenters recommended including these characteristics in the proposed definition of ''tributary,'' similar to the definition of tributary in the 2015 Rule, while others opposed the addition, stating that it would inappropriately result in regulation over certain waters that should not be jurisdictional under the CWA, such as ephemeral features.

The lateral jurisdictional limit of a tributary currently is established by a tributary's ordinary high water mark. The agencies solicit comment on the usefulness of incorporating into the tributary definition the following sentence: ''the lateral extent of a tributary is established by its ordinary high water mark.'' The agencies note that the Corps has existing regulations at 33 CFR 328.4 regarding the limits of jurisdiction for categories of ''waters of the United States.'' The agencies solicit comment on including these Corps regulations in the EPA's regulations or simply cross-referencing the Corps regulations in EPA's to apply to the definition of ''waters of the United States.''

The agencies are proposing to define a typical year as ''within the normal range of precipitation over a rolling 30-year period for a particular geographic area.'' The agencies solicit comment on whether it is necessary to define ''typical year'' given the agencies' understanding that it is a commonly understood term in field application. Alternatively, the agencies seek comment on whether they should provide additional details in the rule text about what constitutes a typical year or provide further guidance in a final preamble about appropriate tools for determining whether a year is ''typical.'' Finally, the agencies solicit comment on alternative approaches in the rule text to convey that times of drought or extreme floods would not be a factor when determining if a river or stream meets the conditions of the definition of ''tributary.''

The agencies are also soliciting comment on implementation methods and tools that could be used to identify and distinguish perennial and intermittent flow regimes from ephemeral flow regimes as defined in this proposal. As mentioned above, such tools could include field-based tools, such as visual observations, or remote desktop tools, such as aerial photos. The agencies are also soliciting comment on

[30] *See, e.g.,* 82 FR 2006 (Jan. 6, 2017) (Corps nationwide permit program); National Research Council. 2002. Riparian Areas: Functions and Strategies for Management. Washington, DC: The National Academies Press. *https://doi.org/10.17226/10327.*

the appropriate watershed scale for use in the geographic area as defined in a ''typical year'' of the proposed rule, for example, hydrologic units at the level of Hydrological Unit Code (HUC)–8s, HUC–10s, or HUC–12s could be used. A broad geographic area may include multiple micro-climates and may not be representative of precipitation conditions on the ground for the subject tributary. The agencies are soliciting comment on other approaches to determine the geographic area.

E. Ditches

1. What are the agencies proposing?

The agencies propose to add a new category to the definition of ''waters of the United States'' to provide regulatory clarity and predictability regarding the regulation of ditches and similar artificial features. The regulatory status of ditches has long created confusion for farmers, ranchers, irrigation districts, municipalities, water supply and stormwater management agencies, and the transportation sector, among others. In an effort to reduce that confusion, the agencies propose to delineate the categories of ditches that would be ''waters of the United States,'' and are proposing to exclude all other ditches from that definition.

The agencies also propose to define ditches for purposes of this proposed rule as simply artificial channels used to convey water. Ditches perform a variety of functions including conveying irrigation water, draining water from farm fields, capturing runoff from roads, or use for transporting goods and services in interstate or foreign commerce, such as the Erie Canal and the Great Lakes Waterway. The status of ditches as ''point sources'' under the CWA, 33 U.S.C. 1362(14), would not be affected by this proposed rule. One of the goals of this proposal is to address the confusion regarding whether ditches are point sources or ''waters of the United States'' more generally, and to provide clear categories for regulators and the regulated community for distinguishing between the two.

The agencies propose to include ditches as ''waters of the United States'' if they (1) satisfy any of the conditions identified in paragraph (a)(1) of this proposed rule; (2) are ditches constructed in a tributary as defined in paragraph (c)(11) of the proposal as long as those ditches also satisfy the conditions of the tributary definition; or (3) are ditches constructed in an adjacent wetland as defined in paragraph (c)(1) of the proposal as long as those ditches also satisfy the conditions of the tributary definition. The agencies propose to exclude all other ditches from the definition of ''waters of the United States.'' Ditches not covered by this proposed category could still be regulated by States and Tribes and would be subject to CWA permitting if they meet the definition of ''point source'' in CWA section 502(14).

2. Why are the agencies proposing this approach?

During the 1970s, the Corps interpreted its authorities under the CWA as not including drainage and irrigation ditches in the definition of ''waters of the United States.'' *See, e.g.,* 40 FR 31320, 31321 (July 25, 1975) (''Drainage and irrigation ditches have been excluded.''). The ditch exclusion was expressly stated in regulatory text in the Corps' 1977 regulations and clarified as applying to ditches excavated in dry land. 33 CFR 323.2(a)(3); 42 FR 37122, 37144 (July 19, 1977) (''manmade nontidal drainage and irrigation ditches excavated on dry land are not considered waters of the United States under this definition''). As the Corps explained in 1977: ''nontidal drainage and irrigation ditches that feed into navigable waters will not be considered 'waters of the United States' under this definition. To the extent that these activities cause water quality problems, they will be handled under other programs of the FWPCA, including Section 208 and 402.'' 42 FR at 37127 (July 19, 1977). Similar statements in proposed rules from the early 1980s confirmed this interpretation: ''man-made, non-tidal drainage and irrigation ditches excavated on dry land are not considered waters of the United States.'' 45 FR 62732, 62747 (September 19, 1980); *see also* 48 FR 21466, 21474 (May 12, 1983) (''Waters of the United States do not include the following man-made waters: (1) Non-tidal drainage and irrigation ditches excavated on dry land, (2) Irrigated areas which would revert to upland if the irrigation ceased.'').

The general exclusion for non-tidal drainage and irrigation ditches excavated in dry land continued through 1986, although the Corps modified its earlier statements that year by noting in preamble text that ''we generally do not consider'' such features to be ''waters of the United States,'' and indicating that the agency would evaluate certain ditches on a case-by-case basis. 51 FR 41206, 41217 (November 13, 1986).[31] The Corps further clarified the regulation of ditches in its nationwide permit regulation in March 2000, stating that ''non-tidal drainage ditches are waters of the United States if they extend the [ordinary high water mark] of an existing water of the United States.'' 65 FR 12818, 12823–24 (March 9, 2000). In other words, if flow or flooding from a jurisdictional non-tidal river or stream inundated an upland ditch, the agencies would assert jurisdiction over that upland ditch because the ordinary high water mark of the river or stream extends into the ditch, and the agencies would then assert jurisdiction over the entire reach of that ditch. Essentially, the agencies have found that a ditch becomes part of the tributary network because of the presence of the ordinary high water mark in the ditch.

In the 2015 Rule, the agencies promulgated a definition of ''waters of the United States'' that expressly included man-made features such as ditches and canals in the definition of tributaries, but excluded ditches with ephemeral flow if those ditches are not a relocated tributary or were not constructed in a tributary. 80 FR 37105 (June 29, 2015). That definition also excluded ditches with intermittent flow, as long as those ditches are not a relocated tributary, are not constructed in a tributary, or do not drain wetlands. *Id.* Ditches that do not contribute flow, either directly or through another ''water of the United States,'' are also excluded from the definition of ''waters of the United States'' under the 2015 Rule. *Id.*

The agencies today propose to clarify the regulatory status of ditches in a manner that would be more consistent with the Corps' regulations following the 1972 and 1977 CWA amendments, with some modifications to provide a clear definition that also falls within scope of the agencies' authority under the CWA.

When Congress enacted the 1972 amendments, it specifically included ditches and related artificial features as ''point sources,'' declaring them to be ''discernible, confined, and discrete conveyances . . . from which pollutants are or may be discharged.'' 33 U.S.C. 1362(16). Congress envisioned protecting the quality of the navigable waters, defined as ''waters of the United States'' at that time, by regulating the discharge of pollutants from conveyances like pipes, ditches, channels, tunnels and similar features into ''waters of the United States.'' *Id.* (defining ''discharge of pollutants'' as ''any addition of any pollutant to navigable waters from any point source''). The agencies today propose to

[31] The Corps also moved the ditch exclusion from rule text to preamble language in 1986 but stated that this was not a substantive change and that jurisdiction was not expanded. 51 FR 41206, 41216–17 (November 13, 1986).

better demarcate navigable waters and point sources that can discharge pollutants into those waters, as established by Congress in 1972. *See, e.g., Rapanos,* 547 U.S. at 735–36 (Scalia, J., concurring) (''The definition of 'discharge' would make little sense if the two categories were significantly overlapping''). To do so, the agencies evaluated the treatment of ditches in the CWA to discern whether Congress intended ditches to be point sources, navigable waters, or both. For example, Congress exempted the discharge of dredged or fill material into ''waters of the United States'' when that discharge occurs as a result of the construction or maintenance of irrigation ditches, the maintenance of drainage ditches, or minor drainage associated with normal farming activities. 33 U.S.C. 1344(f)(1)(A), (C). One possible interpretation of these exemptions is an implicit acknowledgement that there may be some irrigation or drainage ditches that are ''waters of the United States,'' thus the need to exempt common agricultural and related practices in those waters from section 404 permitting. Another interpretation, and one that may more closely align with the pre-existing CWA definition of ''point source,'' is that dredged or fill material is not subject to federal permitting if those materials get washed down the ditch into a connected ''water of the United States.''

For irrigation ditches, which typically are constructed in upland but frequently must connect to a ''water of the United States'' to either capture or return flow, Congress exempted both the construction and maintenance of such facilities. 33 U.S.C. 1344(f)(1)(C); *see also* 33 U.S.C. 1362(14) (excluding agricultural stormwater discharges and irrigation return flows from the definition of point source).[32] The construction activities performed in upland areas are beyond the reach of the CWA, but the permitting exemption applies to the diversion structures, weirs, headgates, and other related facilities that connect the irrigation ditches to jurisdictional waters. *See, e.g.,* Corps, *Regulatory Guidance Letter No. 07–02,* at 1–2 (July 4, 2007).

The permitting exemption for drainage ditches, by contrast, is limited to the maintenance of such ditches. 33 U.S.C. 1344(f)(1)(C). That is because an alternate formulation would have allowed the drainage of wetlands subject to CWA jurisdiction without a permit. Congress' concern for such a result is evident in the ''recapture'' provision of 33 U.S.C. 1344(f)(2). *See, e.g.,* Sen. Rpt. 95–370, 95th Cong. 1st Sess., at 76–77 (July 19, 1977) (noting that exempted ''activities should have no serious adverse impact on water quality if performed in a manner that will not impair the flow and circulation patterns and the chemical and biological characteristics of the affected waterbody'' and noting that the ''exemption for minor drainage does not apply to the drainage of swampland or other wetlands'').

Thus, Congress may have envisioned the interconnection between the irrigation and drainage ditches and down-gradient ''waters of the United States'' as creating the need for the section 404(f) permitting exemptions, not necessarily that those ditches themselves are ''waters of the United States.'' The agencies have not been able to identify any legislative history, however, that signals the clear intent of Congress on this complex topic. The agencies also recognize that this interpretation of the statutory structure has not been articulated previously, and solicit comment on which this formulation adheres more closely to the language of the Act and the positions articulated by the plurality opinion in *Rapanos. See, e.g.,* 547 U.S. at 735–36 and n.7. To be clear, the agencies are not saying that in all circumstances a ditch may be a water of the United States or a point source, but not both. The agencies are, however, attempting to more clearly establish demarcations between the two to reduce regulatory uncertainty.

The agencies today propose to limit the term ''waters of the United States'' to apply to clearly defined categories of ditches and related features. The agencies propose to include their longstanding interpretation that ditches that satisfy any of the conditions of a category (a)(1) water are ''waters of the United States.'' This also includes tidal ditches and ditches that transport goods and services in interstate and foreign commerce, as those ditches—more commonly referred to as ''canals''—provide important commercial navigation services to the nation and operate more like natural waters traditionally understood as navigable. *See, e.g., id.* at 736 (Scalia, J., plurality) (''a permanently flooded man-made ditch used for navigation is normally described, not as a 'ditch,' but a 'canal' ''). The Los Angeles River, for example, is a ''water of the United States'' (having been determined to be a traditional navigable water) and would not be excluded under paragraph (b) even where it has been channelized or concreted. Other examples include the St. Lawrence Seaway, the Sturgeon Bay Ship Canal, and the Chesapeake and Delaware Canal.

In addition, the agencies propose to include ditches that were constructed in a water that meets the proposed definition of ''tributary'' and continues to meet the definition of ''tributary.'' This provision is consistent with the agencies' longstanding, historic position that non-tidal ditches excavated in upland (and historically described as ''dry land'') are not jurisdictional. Features, including ditches, that are not waters under paragraph (a)(1) and that are constructed in upland are not ''waters of the United States'' because areas that are naturally dry land do not meet the ordinary meaning of the term. As discussed in the introduction to Section III, ''waters of the United States'' are waters within the ordinary meaning of the term, such as oceans, rivers, streams, lakes, ponds, and wetlands; ditches artificially excavated in upland do not fit into this category. This proposal would also align the treatment of ditches to that of tributaries in this proposal, which retains the agencies' longstanding position that the alteration or relocation of a ''water of the United States'' does not modify the jurisdictional status of that water, and as such, ditches that alter or relocate a water of the United States would be jurisdictional.

The agencies also propose to include ditches as ''waters of the United States'' if they were constructed in a wetland that meets this proposed definition of ''adjacent wetland,'' as long as the ditch also satisfies the conditions of the tributary definition in this proposed rule. Such an approach would align the proposed rule with the section 404(f) permitting exemption for the maintenance but not construction of drainage ditches, and the associated concern expressed during the legislative process for the 1977 amendments related to draining swamps and wetlands. The provision would also be restricted to ditches that satisfy this proposed definition of ''tributary,'' as such ditches likely functionally maintain some of the same interconnected relationship between the drained wetland and navigable water that supported federal jurisdiction over

[32] The agencies also note that Congress exempted the discharge of irrigation return flows into waters of the United States from the section 402 permit program. 33 U.S.C. 1342(l). This exemption potentially would not be needed if agricultural drainage ditches carrying irrigation return flow were themselves waters of the United States, as the entry point of the irrigation return flow into the drainage ditch might then lack the requisite point source discharging mechanism given the diffuse overland flow entry point from the field to ditch in most circumstances.

the adjacent wetland in the first instance.

Ditches used to drain surface and shallow subsurface water from cropland are a quintessential example of the interconnected relationship between land and water resource management, as is managing water resources in the Western United States, conveying irrigation water to and from fields, and managing surface water runoff from lands and roads following precipitation events—all activities that rely on ditches. *See, e.g., FERC* v. *Mississippi,* 456 U.S. 742, 768 n.30 (1982) (characterizing ''regulation of land use [as] perhaps the quintessential state activity''). This proposal therefore effectuates the clear policy directive from Congress to preserve and protect the primary authority of States over land and water resources within their borders. *See* 33 U.S.C. 1251(b), 1370.

3. How might the agencies implement this approach?

In order to be a jurisdictional ditch under this proposed rule, a feature would first need to meet the definition of ''ditch'' as proposed (*i.e.,* an artificial channel used to convey water). An ''artificial'' channel is not a natural feature, rather it has been constructed in some manner. Also, to meet the proposed definition of ''ditch,'' the artificial channel must be used to convey water. Once a feature has been determined to meet the proposed definition of ''ditch,'' a ditch would be considered ''waters of the United States'' if it meets any of the conditions in paragraph (a)(1). This would include ditches which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, as well as ditches which are subject to the ebb and flow of the tide. This may include waters such as navigable canals and tidal drainage ditches. See Section III.A for further discussion on paragraph (a)(1) waters.

A ditch would also be considered a ''water of the United States'' if it was constructed in a tributary as defined in paragraph (c)(11) and also satisfies the conditions of the tributary definition. A tributary that was channelized or straightened because its natural sinuosity has been altered, cutting off the meanders, may or may not meet the definition of ''ditch'' but nonetheless would remain a tributary as long as it meets the conditions of the tributary definition provided in this proposed rule. If these ditches were tributaries prior to their construction and continue to meet the conditions of the tributary definition after construction, they would remain jurisdictional under the proposed rule. However, if the evidence does not demonstrate whether a ditch was constructed in a tributary as defined in the proposed rule, that ditch would be considered to be non-jurisdictional by the agencies under this proposal.

For example, if the agencies are not sure whether a ditch was constructed in a tributary given the physical appearance and functionality of the current ditch, the agencies would look at the available evidence to attempt to discern when the ditch was constructed and the nature of the landscape before and after construction. If the evidence does not demonstrate that the ditch was located in a natural waterway, the agencies would consider the ditch non-jurisdictional under this proposed rule. If the evidence suggests that the ditch may have been constructed in a natural waterway, the agencies would review the available evidence to attempt to discern whether that natural waterway would qualify as a tributary under this proposed rule. Absent such evidence, the agencies would determine the ditch is non-jurisdictional. If the evidence demonstrates that a ditch was constructed in a tributary, then the ditch would be a ''water of the United States'' as long as it still satisfies the conditions of the proposed definition of ''tributary.'' *See* Section III.D for further information about tributaries under this proposed rule.

A ditch would be considered a ''water of the United States'' if it was constructed in an adjacent wetland as defined in this proposed rule (see Section III.G for a discussion of adjacent wetlands under this proposed rule), but only if that ditch also satisfies the conditions of the proposed definition of ''tributary.'' The same scenarios above for ditches constructed in a tributary would apply when determining the jurisdictional status of a ditch constructed in an adjacent wetland. If there is evidence to indicate that a ditch was constructed in an adjacent wetland as defined in the proposal, the agencies would consider the ditch to be jurisdictional if it also satisfies the conditions of the tributary definition as proposed. Absent such evidence, the agencies would determine the ditch is non-jurisdictional.

Along with field data and current information on the subject water, historic tools and resources may also be used to determine the presence of a tributary or adjacent wetland at the time of ditch construction, and several sources of information may be required to make such determination. This may include historic topographic maps, historic aerial photographs, local and state records and surface water management plans, agricultural records, street maintenance data, precipitation records, historic permitting and jurisdictional determination records, certain hydrogeomorphological or soil indicators, wetlands and conservation programs and plans, and functional assessments and monitoring efforts. For example, when a USGS topographic map displays a tributary located upstream and downstream of a ditch, this may indicate that the ditch was constructed in a tributary.

In addition, high resolution aerial photographs may be used to identify whether there are or were characteristics of a tributary upstream or downstream of a ditch, indicating that a ditch may have been constructed in a tributary. In some cases, stream channel morphology is visible on the aerial photograph along with visible persistent water (*e.g.,* multiple dates of aerial photography showing visible water) providing evidence of the flow regime necessary to identify a tributary under this proposed rule at the time of ditch construction. However, characteristics of tributaries may not be visible in aerial photographs taken in areas with high shrub or tree cover, in which case aerial photographs taken during ''leaf off'' may provide the most beneficial information. National Wetlands Inventory maps may indicate the presence of a ditch constructed in an adjacent wetland; however, it may be challenging to identify the historic status of a wetland where a ditch has drained the wetland such that it would no longer meet the definition of ''adjacent wetland'' under this proposed rule. In general, the burden of proof would be on the agencies to determine the historic status of the ditch construction, and if field and remote-based resources do not provide sufficient evidence to show that the ditch was constructed in a tributary or an adjacent wetland then a determination would be made that the ditch is not jurisdictional under this proposed rule.

4. What are the specific issues upon which the agencies are seeking comment?

While the public may comment on all aspects of the agencies' proposed rule, the agencies are proposing a number of ways to address and clarify jurisdiction over ditches as described above and are seeking comment. The agencies seek comment on the utility and clarity of proposing a separate category of jurisdictional ditches and how the agencies have delineated those ditches that would be ''waters of the United States'' and those that would be

excluded. In the alternative, the agencies seek public comment on whether the agencies should retain the historical treatment of jurisdictional ditches within the definition of ''tributary'' and not in a separate category. The agencies also seek comment on their proposed definition of ''ditch.''

As the agencies consider how to implement this provision, the agencies seek comment on whether they should add a temporal component to distinguish jurisdictional ditches when evaluating ditches that may have been constructed in tributaries or adjacent wetlands. For example, the agencies could consider a ditch that appears to have been constructed in upland to be non-jurisdictional unless there is evidence that the ditch was in fact constructed in a natural waterway prior to the adoption of the 1972 CWA amendments. The agencies also solicit comment as to what tools can be used to help identify whether a ditch is constructed in upland or whether it was constructed in a tributary or adjacent wetland that meets the respective proposed definitions, and in particular what sort of showing would constitute evidence that a ditch was constructed in upland or in a jurisdictional tributary or adjacent wetland. The agencies seek comment as to whether there are other approaches for addressing the evidentiary concerns that may arise in a permitting context for historic ditches. For example, the agencies solicit comment on the role of historic photographs and records, in determining whether a ditch was built in a tributary and more generally what constitutes evidence that a ditch was constructed in a tributary or an adjacent wetland.

In addition, the agencies solicit comment on the exclusion of all ditches constructed in upland, regardless of flow regime, and whether that is consistent with the plurality and concurring opinions in *Rapanos.* For example, ditches constructed in upland that flow perennially would be presumed non-jurisdictional under this proposal, even if they would also satisfy the conditions of the proposed tributary definition. Finally, the agencies solicit comment on whether a ditch can be both a point source and a ''water of the United States,'' or whether these two categories as established by Congress are mutually exclusive.

F. Lakes and Ponds

1. What are the agencies proposing?

The agencies are proposing a separate category of waters of the United States to include certain lakes and ponds. The agencies are proposing three instances where lakes and ponds would meet the definition of ''waters of the United States.'' First, lakes and ponds that satisfy any of the conditions in paragraph (a)(1) are proposed to be included. Such lakes and ponds would be jurisdictional as an (a)(1) water, as well as an (a)(4) water.

Second, lakes and ponds that contribute perennial or intermittent flow to an (a)(1) water in a typical year through an (a)(2)–(6) water would also be considered waters of the United States. This second category of lakes and ponds can contribute flow to an (a)(1) water either directly or through a tributary, jurisdictional ditch, another jurisdictional lake or pond, an impoundment, an adjacent wetland, or through a combination of these waters. The contribution of perennial or intermittent flow to an (a)(1) water from such lakes and ponds may also occur through water features identified in paragraph (b) of this proposal so long as those water features convey perennial or intermittent flow downstream and ultimately to an (a)(1) water. The term ''typical year'' as used in the proposed lakes and ponds category of ''waters of the United States'' would be implemented using the proposed definition of the term in paragraph (c)(12).

Third, the agencies propose that lakes and ponds flooded by an (a)(1)–(5) water in a typical year would be waters of the United States. These lakes and ponds would receive flood waters from (a)(1)–(5) waters via overtopping in a typical year.

2. Why are the agencies proposing this approach?

The agencies propose to include certain lakes and ponds as waters of the United States because lakes and ponds are waters within the ordinary meaning of the term. As discussed in Section II, the plurality decision in *Rapanos* explains that the term ''the waters'' is most commonly understood to refer to ''streams and bodies forming geographical features such as oceans, rivers, lakes,'' or ''the flowing or moving masses, as of waves or floods, making up such streams or bodies.'' 547 U.S. at 732. The plurality also noted that its reference to ''relatively permanent'' waters did ''not necessarily exclude streams, rivers, or lakes that might dry up in extraordinary circumstances, such as drought,'' *Id.* at 732 n.5. The agencies focus in large part on the lake or pond's contribution of flow to and connection with traditional navigable waters to remain consistent with the overall structure and function of the CWA. *See, e.g., SWANCC,* 531 U.S. at 168 n.3.

Many commenters in the Federalism consultation with the agencies stated that the rule should include permanent lakes. Some commenters also stated that the rule should not include isolated lakes, which this proposal does not unless the lake satisfies the conditions in paragraph (a)(1). The agencies are proposing a distinct category for lakes and ponds because they are distinct water features; they are lentic systems (*i.e.,* still waters) as opposed to tributaries, which are typically lotic features (*i.e.,* flowing waters). In addition, the agencies view the establishment of a separate category for lakes and ponds as providing greater clarity and predictability for Federal agencies, States, Tribes, the regulated community, and the public, rather than including these waters in the definition of ''tributaries'' or with adjacent wetlands.

As discussed in Section II, the agencies' authority to regulate ''the waters of the United States'' is grounded in Congress' commerce power over navigation. The agencies can choose to regulate beyond waters more traditionally understood as navigable given the broad purposes of the CWA, but must provide a reasonable basis for doing so. The agencies are proposing that lakes and ponds that contribute perennial or intermittent flow to those traditional navigable waters, in any of the manners described above, fall within Congress' commerce power and are consistent with the ordinary meaning of ''waters of the United States,'' and that regulating them effectuates the goals and policies of the CWA.

Lakes and ponds that satisfy any of the conditions in paragraph (a)(1) are traditionally navigable waters and as such should be considered waters of the United States for the same reasons discussed under the rationale for (a)(1) waters in this proposal. Lakes and ponds that contribute perennial or intermittent flow to an (a)(1) water in a typical year either directly or indirectly through an (a)(2)–(6) water or through water features identified in paragraph (b) of this proposal so long as those water features convey perennial or intermittent flow would also be considered waters of the United States. Such lakes and ponds would contribute flow in a manner similar to a tributary and would be jurisdictional for the same reasons that a tributary would be jurisdictional. Lakes and ponds that contribute flow to traditional navigable waters through ephemeral flow would be excluded for the same reasons that

ephemeral features are proposed to be not jurisdictional. The agencies believe that this proposed category of lakes and ponds better reflects the limits to the agencies' authority that the plurality and concurring opinions recognized in *Rapanos.*

By requiring that a contribution of flow exists as perennial or intermittent flow between lakes and ponds and traditional navigable waters, including the territorial seas, in the proposed definition, the agencies would establish that a mere hydrologic connection cannot provide the basis for CWA jurisdiction; the connection must be perennial or intermittent flow from the lake or pond. This proposed requirement is informed by *Rapanos* wherein the plurality rejected the Federal government's hydrologic connection theory in deciding that the phrase ''the waters of the United States'' ''cannot bear the expansive meaning that the Corps would give it,'' *id.* at 732, and challenged the notion that ''even the most insubstantial hydrologic connection may be held to constitute a 'significant nexus.' '' *Id.* at 728. It also reflects the plurality's description of a '' 'wate[r] of the United States' '' as ''*i.e.,* a relatively permanent body of water *connected to* traditional interstate navigable waters.'' *Id.* at 742 (emphasis added).

Lakes and ponds that are flooded by an (a)(1)–(5) water in a typical year would be considered waters of the United States under this proposal. *See Rapanos,* 474 U.S. at 732 (Scalia, J., plurality) (recognizing that the term ''the waters'' within ''the waters of the United States'' includes ''the flowing or moving masses, as of waves or *floods,* making up . . . streams or bodies,'') (emphasis added) (internal quotations omitted); *id.* at 770 (Kennedy, J., concurring) (''the term 'waters' may mean '*flood* or inundation' events that are impermanent by definition'') (emphasis added) (internal citations omitted). During times of inundation occurring from a jurisdictional water to a lake or pond in a typical year, such lake or pond is indistinguishable from and inseparably bound up with other waters of the United States.

Flooding from a water of the United States to a jurisdictional lake or pond can occur as a result of seasonal or permanent flooding, for example, so long as flood waters connect such lakes or ponds to other waters of the United States in a typical year and have as their source a jurisdictional water. A mere hydrologic connection between a nonnavigable, isolated, intrastate lake or pond and a jurisdictional water, however, may be insufficient to establish jurisdiction under the proposed rule. For instance, a lake or pond that may be connected to a ''water of the United States'' by flooding, on average, once every 100 years would not be jurisdictional under this proposal. To be jurisdictional, a lake or pond that is otherwise physically separated from a ''water of the United States'' would need to be flooded by a jurisdictional water *during a typical year;* ecological connections between physically separated lakes and ponds and otherwise jurisdictional waters cannot be used to assert jurisdiction according to this proposal. *See* 547 U.S. at 741–42 (Scalia, J., plurality) (''*SWANCC* found such ecological consideration irrelevant to the question whether physically isolated waters come within the Corps' jurisdiction.'').

The proposed lakes and ponds category would replace existing procedures that may depend on case-specific ''significant nexus'' analyses of the relationship between a particular lake or pond with downstream waters. The agencies are proposing to eliminate this case-specific ''significant nexus'' analysis by providing a clear category of ''waters of the United States'' that is easier for members of the public and regulatory agencies to implement. In light of the clearer lakes and ponds category proposed today, the agencies propose to eliminate the case-specific significant nexus review through categorical treatment of certain lakes and ponds as ''waters of the United States.''

This proposed rule identifies a category of certain lakes and ponds that due to their contribution of perennial or intermittent flow to navigable waters should be federally regulated. Through this proposed category, the agencies would also acknowledge the policy direction from Congress to ''recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution [and] to plan for the development and use (including restoration, preservation, and enhancement) of land and water resources . . . .'' 33 U.S.C. 1251(b); *see also Rapanos,* 547 U.S. at 737 (Scalia, J., plurality). The proposed approach to lakes and ponds is also intended to avoid ''impairing or in any manner affecting any right or jurisdiction of the States with respect to waters (including boundary waters) of such States.'' 33 U.S.C. 1370. For example, lakes and ponds which contribute ephemeral flow, such as through dry washes and arroyos, that lack the required perennial or intermittent flow regime necessary to satisfy the conditions of jurisdictional lakes and ponds under this proposed rule would not be ''waters of the United States.'' Those features are, however, water resources of the States, and therefore, States have an inherent interest in regulating such features pursuant to the powers reserved to the States under the Constitution. *See., e.g., North Dakota,* 127 F. Supp. 3d at 1059. States and Tribes may therefore address such features under their own laws to the extent they deem appropriate. Lakes and ponds that contribute flow through ephemeral features may also constitute point sources that discharge pollutants to a ''water of the United States.'' See *Rapanos,* 547 U.S. at 743–44 (Scalia, J., plurality). In those instances, authority to regulate water quality in downstream waters under the CWA is not lost to either Federal or State governments.

3. How might the agencies implement this approach?

Most lakes and ponds are formed through a variety of events, including glacial, tectonic, and volcanic activity. Lakes and ponds can also be man-made features for industrial and agricultural uses, power generation, domestic water supply, or for aesthetic or recreational purposes. Most lakes and ponds have at least one natural outflow in the form of a river or stream, which maintain a lake's average level by allowing the drainage of excess water. Some lakes do not have a natural outflow and lose water solely by evaporation or underground seepage or both. Individual lakes and ponds range in size. Ponds are generally smaller in size than lakes but regional naming conventions vary. Lakes are also generally deeper than ponds.

The tools and guidance which are described in Section III.A can be used to determine whether a lake or pond meets the terms of an (a)(1) water and as such would be jurisdictional under this proposed rule as an (a)(1) water, as well as an (a)(5) water. The same tools discussed in Section III.C can also be helpful in establishing the presence of a lake or pond. For example, where an enclosed body of water is displayed on a USGS topographic map or in NHD data it may indicate a lake or pond is present. USGS maps often include different symbols to indicate perennial or intermittent lakes and ponds and even a different symbol to indicate dry lakes and ponds, which may be helpful in determining whether such lakes and ponds satisfy the proposed definition of ''waters of the United States.'' Waterbodies such as lake and pond features are also represented in NHDWaterbody. The NHD portrays the spatial geometry and the attributes of the feature. These water polygons may

also have NHDFlowline artificial paths drawn through them to allow the representation of water flow direction. Combining this information with climate and surrounding hydrology information can yield greater certainty as to the presence of a lake or pond and the flow regime the lake or pond contributes downstream. These tools may also be helpful in indicating whether the lake or pond is part of the ''waters of the United States'' network because they may identify whether it contributes perennial or intermittent flow downstream. For example, the presence of a ''blue line stream'' on USGS topographic or NHD maps which extends from the lake or pond may indicate the lake or pond contributes perennial or intermittent flow, directly or indirectly through an (a)(2)–(6) water, to the (a)(1) water in a typical year, which may indicate that the lake or pond is jurisdictional. Other reliable methods that can indicate existence of a lake or pond and potential jurisdictional status include gage data, bathymetry data, elevation data, spillway height, historic water flow records, flood predictions, statistical evidence, and direct observation.

The agencies are proposing that lakes and ponds that are flooded by a water identified in paragraphs (a)(1)–(5) in a typical year would also be waters of the United States. The agencies propose to use flood records, precipitation data, elevation data, aerial photography, and field observations to help identify when a lake or pond may be flooded by an (a)(1)–(5) water in a typical year. Oxbows may be jurisdictional under this category.

The information provided by the tools described above will vary in validity in different parts of the country, so care would be taken to evaluate the information prior to reasonably concluding a lake or pond is jurisdictional. Supporting information, as well as field work, may also be used to conclude the presence of a jurisdictional lake or pond.

4. What are specific issues upon which the agencies are seeking comment?

The agencies welcome comment on the proposal to establish a distinct jurisdictional category for lakes and ponds and whether this provides additional clarity and regulatory certainty. In the alternative, the agencies solicit comment on incorporating jurisdictional lakes and ponds into another category, such as tributaries. The agencies note that there is considerable uncertainty about defining the difference between lakes and ponds, and no current accepted definition of either term across scientific disciplines exists. The agencies are soliciting comment on whether a specific definition of lakes and ponds should be provided in the rule language or whether any such definition is necessary. For example, the Corps has a definition of ''lake'' provided at 33 CFR 323.2, which includes, ''The term *lake* means a standing body of open water that occurs in a natural depression fed by one or more streams from which a stream may flow, that occurs due to the widening or natural blockage or cutoff of a river or stream, or that occurs in an isolated natural depression that is not a part of a surface river or stream. The term also includes a standing body of open water created by artificially blocking or restricting the flow of a river, stream, or tidal area. . . .'' Alternatively, other definitions could be used to define lakes and ponds, such as the Cowardin classification system developed by the U.S. Fish and Wildlife Service which could use the permanently flooded and semi-permanently flooded for non-tidal waters categories. Such definition could be, ''Lakes and ponds are either semi-permanently or permanently flooded during a typical year and may or may not exhibit hydrophytic vegetation.'' There may also be other parameters used to define lakes and ponds, such as size and depth. For example, in the 1975 regulations, the Corps had proposed a minimum size requirement on lakes of five acres to be waters of the United States. *See* 40 FR 31321. However, such size requirement received many negative comments that the size was too small or too large or did not account for seasonal changes in sizes of lakes, while others commented on the legality of imposing size limitations on lakes. *See* 42 FR 37129. Also, the agencies recognize that States and Tribes may have specific, validated tools they employ to identify lakes or ponds and are soliciting comment on those approaches which may be useful for application in this proposed rule.

The agencies solicit comment on whether more specific parameters should be included for the type of flooding that should be included for lakes and ponds when flooded by an (a)(1)–(5) water in a typical year. For example, the agencies request comment as to whether to establish a specific flooding periodicity or magnitude or frequency. The agencies also solicit comment on other implementation tools available to determine the presence of a contribution of perennial or intermittent flow from the lake or pond in a typical year. Additionally, the agencies request comment on whether less than intermittent flow from lakes and ponds to an (a)(1) water in a typical year could be sufficient to extend jurisdiction to such lakes and ponds.

G. Wetlands

1. What are the agencies proposing?

The agencies propose a category of ''waters of the United States'' to include all adjacent wetlands to: Traditional navigable waters, including the territorial seas; tributaries to those waters; jurisdictional ditches; jurisdictional lakes and ponds; and impoundments of otherwise jurisdictional waters. The agencies propose to maintain their longstanding regulatory definition of ''wetlands'' to mean ''those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.'' The presence and boundaries of wetlands are determined based upon an area satisfying all three of the definition's criteria (*i.e.,* hydrology, hydrophytic vegetation, and hydric soils) under normal circumstances.

The agencies propose to define the term ''adjacent wetlands'' to mean wetlands that abut or have a direct hydrologic surface connection to other ''waters of the United States'' in a typical year. ''Abut'' is proposed to mean when a wetland touches a water of the United States at either a point or side. A ''direct hydrologic surface connection'' as proposed occurs as a result of inundation from a jurisdictional water to a wetland or via perennial or intermittent flow between a wetland and a jurisdictional water.

The agencies propose that when wetlands are physically separated from jurisdictional waters by upland or by dikes, barriers, or similar structures and also lack a direct hydrologic surface connection to jurisdictional waters, those wetlands are not adjacent. ''Upland'' in the proposed rule refers to any land area above the ordinary high water mark or high tide line that does not satisfy all three wetland delineation factors (*i.e.,* hydrology, hydrophytic vegetation, and hydric soils) under normal circumstances, as described in the Corps' 1987 Wetland Delineation Manual. Features that were once wetlands but have been naturally transformed or lawfully converted to upland (*e.g.,* in compliance with a section 404 permit) would be

considered upland. A ''typical year'' means within the normal range of precipitation over a rolling 30-year period for a particular geographic area. For convenience, the agencies propose to include the existing Corps definitions for ''ordinary high water mark'' and ''high tide line'' from 33 CFR 328.3, as those terms are used in the proposed definition of ''upland.''

Wetlands that have a direct hydrologic surface connection to a ''water of the United States'' via inundation by a jurisdictional water during a typical year would be adjacent wetlands under the proposal. Similarly, a wetland has a direct hydrologic surface connection to a jurisdictional water and is an adjacent wetland if the wetland and jurisdictional water are connected via perennial or intermittent flow in a typical year. The perennial or intermittent flow constituting the direct hydrologic surface connection may occur in either direction (*i.e.,* jurisdictional water to wetland or wetland to jurisdictional water). Perennial or intermittent flow between a wetland and jurisdictional water may occur through upland or through a dike, barrier, or similar structure via a culvert, tide gate, or other feature. Perennial or intermittent flow between a wetland and jurisdictional water may also occur as a result of a wetland overtopping upland or overtopping a dike, barrier, or similar structure and flowing directly into a jurisdictional water.

2. Why are the agencies proposing this approach?

The agencies are proposing the definition of ''adjacent wetlands'' based on the core principles and concepts set forth in the three major Supreme Court cases addressing the scope of the phrase ''the waters of the United States,'' as discussed at length in Section II.E.2. In summary, adjacent wetlands as proposed form part of the ''waters of the United States''; otherwise they are isolated from ''waters of the United States'' and not jurisdictional. The agencies' proposed definition is consistent with the ordinary meaning of the term ''waters'' described in those cases and is intended to implement the CWA policy directive of preserving the ability of the States to regulate land and waters within their boundaries. The agencies view the proposed definition as establishing a clear, predictable regulatory framework that can be efficiently implemented in the field.

This proposed definition of ''adjacent wetlands'' as wetlands abutting or having a direct hydrologic surface connection to other jurisdictional waters in a typical year rests on several key factors and considerations. As a threshold matter, the proposed definition is informed by the Supreme Court decisions in *Riverside Bayview, SWANCC,* and *Rapanos.* For example, the agencies considered the holding in *Riverside Bayview* ''that a definition of 'waters of the United States' encompassing all wetlands adjacent to other bodies of water over which the Corps has jurisdiction is a permissible interpretation of the Act.'' 474 U.S. at 135. The proposed definition is consistent with the holding in *Riverside Bayview* and with the Supreme Court's subsequent interpretation of *Riverside Bayview* and the scope of CWA jurisdiction over wetlands in *Rapanos,* in which both the plurality and concurring opinions agreed that waters of the United States encompass wetlands closely connected to navigable waters. As discussed in Section II.E.2, the plurality characterized the scope of CWA jurisdiction over wetlands as encompassing wetlands, like those at issue in *Riverside Bayview,* with a ''continuous surface connection'' or a ''continuous physical connection'' to a navigable water, *Rapanos,* 547 U.S. at 742, 751 n.13. Justice Kennedy's concurrence recognized that ''the connection between a nonnavigable water or wetland and a navigable water may be so close, or potentially so close, that the Corps may deem the water or wetland a 'navigable water' under the Act.'' *Id.* at 767. The concepts of ''abutting'' and a ''direct hydrologic surface connection'' in this proposal are consistent with the *Rapanos* plurality's continuous surface connection requirement. Because the concept of ''abutting'' in this proposal does not require the existence of a hydrologic connection between wetlands that physically touch jurisdictional waters, this concept is also consistent with Justice Kennedy's statement that ''[g]iven the role wetlands play in pollutant filtering, flood control, and runoff storage, it may well be the absence of hydrologic connection (in the sense of interchange of waters) that shows the wetlands' significance for the aquatic system.'' *Id.* at 786. The agencies acknowledge, however, that non-abutting wetlands may also lack a hydrologic connection. Those non-abutting wetlands would not be considered adjacent under this proposal because the agencies believe they do not implicate the line-drawing concerns articulated in *Riverside Bayview, SWANCC,* and the *Rapanos* plurality, and because this proposed definition will provide clear, understandable delineation between Federal waters and state land and water resources.

The limits to this proposed definition, *i.e.,* the categories of wetlands that the proposed definition would not encompass, are consistent with the principles articulated in the three key Supreme Court decisions. The inquiry as to where to draw the line between jurisdictional and non-jurisdictional wetlands is laid out in *Riverside Bayview:* ''[i]n determining the limits of its power to regulate discharges under the Act, the Corps must necessarily choose some point at which water ends and land begins . . . . Where on this continuum to find the limit of 'waters' is far from obvious.'' 474 U.S. at 132. While the Court in *Riverside Bayview* identified this inquiry as a task for the Corps and deferred to the Corps' judgment under *Chevron* principles, the Supreme Court has subsequently recognized outer bounds for the scope of ''waters of the United States.''

In *SWANCC,* the Supreme Court held that the agencies do not have authority to regulate nonnavigable, isolated, intrastate waters that lack a sufficient connection to a traditional navigable water, as regulation of those waters would raise constitutional questions regarding the scope of CWA authority. 531 U.S. at 172. The plurality opinion in *Rapanos* elaborated further on the wetlands that it did not consider jurisdictional under the Act, specifically, wetlands with only an ''intermittent, physically remote hydrologic connection to 'waters of the United States,' '' as those ''do not implicate the boundary-drawing problem of *Riverside Bayview.*'' 531 U.S. at 742. The proposed definition also reflects Justice Kennedy's concurring opinion in *Rapanos* that in some instances, as exemplified by the ''ponds and mudflats that were isolated in the sense of being unconnected to other waters covered by the Act,'' ''there may be little or no connection'' ''between a nonnavigable water or wetland and a navigable water.'' *Id.* at 766–67. The proposal is consistent with *SWANCC* and the *Rapanos* plurality opinion in that it would exclude isolated wetlands with only physically remote hydrologic connections to jurisdictional waters. Under the proposed definition, ecological connections alone would not provide a basis for including physically isolated wetlands within the phrase ''the waters of the United States.'' *See, e.g., id.* at 741–42 (Scalia, J., plurality) (''*SWANCC* rejected the notion that the ecological considerations upon which the Corps relied in *Riverside Bayview*—and upon which the dissent repeatedly relies today . . .—provided an

independent basis for including entities like 'wetlands' (or 'ephemeral streams') within the phrase 'the waters of the United States.' *SWANCC* found such ecological considerations irrelevant to the question whether physically isolated waters come within the Corps' jurisdiction.'' (original emphasis)).

In assessing the appropriate ''limits of 'waters' '' on the continuum between water and land, the proposed definition balances the inclusion of wetlands that have a direct hydrologic surface connection to otherwise jurisdictional waters during a typical year with the fact that ''a mere hydrologic connection should not suffice in all cases.'' *Id.* at 784 (Kennedy, J., concurring). For example, the *Rapanos* plurality questioned the Corps' broad interpretation of its regulatory authority to ''conclude that wetlands are 'adjacent' to covered waters if they are hydrologically connected through directional sheet flow during storm events or if they lie within the 100-year floodplain of a body of water.'' *Id.* at 728 (internal citations and quotations omitted). Similarly, Justice Kennedy believed that ''possible flooding'' was an unduly speculative basis for a jurisdictional connection between wetlands and other jurisdictional waters as applied to the facts of *Carabell.* 547 U.S. at 786. In other words, wetlands separated from otherwise jurisdictional waters by upland or by dikes, barriers, or other similar structures are not adjacent simply because a surface water connection between the two is possible or if, for example, wetlands ''are connected to the navigable water by flooding, on average, once every 100 years'' or by directional sheet flow during an individual storm event. *Id.* In order to satisfy this proposed ''adjacent wetlands'' definition, a wetland separated from other waters of the United States by upland or by dikes, barriers, or other similar structures would have to have a direct hydrologic surface connection to an otherwise jurisdictional water in a typical year.

As proposed, a direct hydrologic surface connection occurs as a result of inundation from a jurisdictional water to a wetland or via perennial or intermittent flow between a wetland and a jurisdictional water. Inundation can occur as a result of seasonal or permanent flooding, for example, so long as inundation occurs in a typical year and has as its source a jurisdictional water. A direct hydrologic surface connection that occurs as a result of perennial or intermittent flow between a wetland and a jurisdictional water must satisfy the definitions of ''perennial'' or ''intermittent'' in this proposal and can occur either from a jurisdictional water to a wetland or from a wetland to a jurisdictional water. Ephemeral flow or ephemeral pooling occurring only in direct response to precipitation and connecting a wetland to a jurisdictional water does not constitute a direct hydrologic surface connection according to the proposal.

Under current practice and in this proposal, wetlands adjacent to traditional navigable waters would be categorically jurisdictional. The agencies propose to adopt this position based on the rationale that an adjacent wetland is ''inseparably bound up with'' the jurisdictional water; if the water is jurisdictional, so is the adjacent wetland. *Riverside Bayview,* 474 U.S. at 134; *Rapanos,* 547 U.S. at 740 (plurality quoting *Riverside Bayview*) (' 'Faced with such a problem of defining the bounds of its regulatory authority,' we held, the agency could reasonably conclude that a wetland that 'adjoin[ed]' waters of the United States is itself a part of those waters.'') (internal citations omitted). This position is consistent with *Riverside Bayview,* about which Justice Kennedy noted in *Rapanos* that ''the assertion of jurisdiction for those wetlands is sustainable under the Act by showing adjacency alone.'' 547 U.S. at 780.

In addition, this proposed definition would end the current practice of conducting case-specific significant nexus evaluations for non-abutting wetlands to relatively permanent and non-relatively permanent waters. Under the agencies' *Rapanos* Guidance, this evaluation requires individual analyses of the relationship between a particular wetland with traditional navigable waters. Importantly, Justice Kennedy's ''significant nexus'' test for wetlands adjacent to nonnavigable tributaries was only needed ''absent more specific regulations,'' *id.* at 782, because ''the breadth of [the existing tributary] standard'' . . . ''seems to leave wide room for regulations of drains, ditches, and streams remote from any navigable-in-fact water and carrying only minor water volumes towards it'' and thus ''precludes its adoption as a determinative measure of whether adjacent wetlands are likely to play an important role in the integrity of an aquatic system comprising navigable waters as traditionally understood.'' *Id.* at 781. In light of the ''more specific [tributary] regulations'' proposed today, the agencies propose to eliminate the case-specific significant nexus analysis through categorical treatment of all adjacent wetlands, as defined by this proposal, as waters of the United States. The agencies recognize that this is a new position and modification of prior agency positions on Justice Kennedy's concurring opinion in *Rapanos.* The agencies also recognize that several courts have adopted the significant nexus standard as a test for jurisdiction for both adjacent wetlands and tributaries. The agencies believe, however, that this proposal provides better clarity for the regulators and the regulated community alike while adhering to the basic principles articulated in all three Supreme Court cases on point.

The proposed categorical inclusion of adjacent wetlands beyond the wetlands that ''actually abut[ ]'' navigable-in-fact waters addressed in *Riverside Bayview,* 474 U.S. at 135, the agencies recognize, is dependent on the relationship between the other categories of ''waters of the United States'' and waters more traditionally understood as navigable. The agencies believe that the proposed definition of ''tributary,'' as described in Section III.D, would appropriately limit federal jurisdiction to those rivers and streams that due to their relatively permanent flow regime and contribution of flow to navigable waters are ''significant enough that wetlands adjacent to them are likely, in the majority of cases, to perform important functions for an aquatic system incorporating navigable waters.'' *Rapanos,* 547 U.S. at 781 (Kennedy, J., concurring). Because the tributary definition as proposed today ''rests upon a reasonable inference of ecological interconnection'' with navigable waters, and adjacent wetlands as proposed must be ''directly abutting'' or have a direct hydrologic surface connection to tributaries and are thus ''inseparably bound up with'' tributaries, the assertion of jurisdiction over wetlands adjacent to tributaries ''is sustainable under the Act by showing adjacency alone.'' *Id.* at 780 (citing *Riverside Bayview,* 474 U.S. at 134). The proposed ''tributary'' definition—which addresses the ''breadth of [the] standard'' about which Justice Kennedy was concerned in *Rapanos*—would provide support for the Court's conclusion in *Riverside Bayview* ''that a definition of 'waters of the United States' encompassing all wetlands adjacent to other bodies of water over which the Corps has jurisdiction is a permissible interpretation of the Act.'' *Id.* at 135. To be clear, there is no requirement under this proposal to prove the existence of nor the significance of ''ecological interconnection'' between an adjacent wetland and navigable waters. If a wetland meets the proposed ''adjacent

wetland'' definition, it would be jurisdictional.

The proposed definition of ''adjacent wetlands,'' which includes the term ''abut,'' also captures the common understanding of that term, meaning ''touching.'' *See Webster's II, New Riverside University Dictionary* (1994) (defining ''abut'' to mean ''to touch at one end or side of something''). This definition is also consistent with the common understanding of the term ''adjacent,'' which means ''next to,'' ''adjoining,'' ''to lie near,'' or ''close to,'' *see id.,* and is consistent with the *Rapanos* plurality's ''physical-connection requirement,'' 547 U.S. at 751 n.13.

By retaining the term ''adjacent'' in the proposed definition from the longstanding regulations, the agencies would continue to use terminology that is familiar to the agencies and the regulated public. But the agencies are proposing not to include the terms ''bordering, contiguous, or neighboring'' from the 1986 regulations, as the agencies consider the term ''abut'' and the concept of a ''direct hydrologic surface connection'' as reducing the potential confusion associated with using three seemingly similar terms in the same definition. *See, e.g.,* U.S. General Accounting Office, *Waters and Wetlands,* GAO–04–297, at 10 (Feb. 2004) (''The regulations specify that adjacent means 'bordering, contiguous, or neighboring'. . . . This definition of adjacency leaves some degree of interpretation to the Corps districts''); *see also id.* at 3 (''Districts apply different approaches to identify wetlands that are adjacent to other waters of the United States and are subject to federal regulation.'').

The term ''abut'' in the proposed definition, meaning ''to touch at least at one point or side of'' a jurisdictional water, would provide members of the regulated community with fair notice as to whether wetlands are subject to CWA jurisdiction. The agencies consider wetlands that abut or have a direct hydrologic surface connection to otherwise jurisdictional waters in a typical year to better meet the ordinary meaning of the term ''waters'' more clearly than wetlands separated from such waters by dry land and lacking a direct hydrologic surface connection or located a specified distance from those waters. *See, e.g.,* 547 U.S. at 740 quoting *Riverside Bayview,* 474 U.S. at 132, 135, and n. 9 (''[W]e held, the agency could reasonably conclude that a wetland that 'adjoin[ed]' waters of the United States is itself a part of those waters.'').

This proposed categorical treatment of adjacent wetlands would also effectuate the clear policy direction from Congress to ''recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution [and] to plan for the development and use (including restoration, preservation, and enhancement) of land and water resources . . . .'' 33 U.S.C. 1251(b); *see also Rapanos,* 547 U.S. at 737 (Scalia, J., plurality). The agencies believe that this approach avoids ''impairing or in any manner affecting any right or jurisdiction of the States with respect to the waters (including boundary waters) of such States.'' *Id.* at 1370. Wetlands that do not abut or have a direct hydrologic surface connection to other waters of the United States in a typical year are not inseparably bound up with the waters of the United States and are more appropriately regulated as land and water resources of the States and Tribes pursuant to their own authorities.

The agencies also note that the proposed definition of ''adjacent wetlands'' and the categorical treatment of jurisdiction over wetlands adjacent to tributaries as proposed is informed by, though not dictated by, science. For example, the EPA's Science Advisory Board noted when reviewing the Draft Connectivity Report in 2014, ''[s]patial proximity is one important determinant of the magnitude, frequency and duration of connections between wetlands and streams that will ultimately influence the fluxes of water, materials and biota between wetlands and downstream waters.'' SAB Review at 60. ''Wetlands that are situated *alongside* rivers and their tributaries are likely to be connected to those waters through the exchange of water, biota and chemicals. As the distance between a wetland and a flowing water system increases, these connections become less obvious.'' *Id.* at 55 (emphasis added). The Connectivity Report also recognizes that ''areas that are closer to rivers and streams have a higher probability of being connected than areas farther away.'' Connectivity Report at ES–4. As discussed above, however, the line between Federal and State waters is a legal distinction, not a scientific one, that reflects the overall framework and construct of the CWA. This proposed definition would draw the legal limit of federal jurisdiction as those wetlands that abut or have a direct hydrologic surface connection to otherwise jurisdictional waters, including tributaries as defined in this proposal, in a clear and implementable way that adheres to established legal principles while being informed by the policy choices and expertise of the executive branch agencies charged with administering the CWA.

3. How might the agencies implement this approach?

Under this proposal, wetlands would be considered indistinguishable from other jurisdictional waters, and therefore adjacent, when they abut such waters, even in the absence of a surface hydrological connection occurring between the two. Alternatively, when wetlands are not abutting jurisdictional waters, for example where wetlands are separated from jurisdictional by upland or dikes, barriers, or other similar structures, those wetlands would not be adjacent wetlands unless they have a direct hydrologic surface connection to a jurisdictional water during a typical year. If a wetland satisfies this proposed definition it would be considered a ''water of the United States'' without need for further case-specific significant nexus analysis. This categorical inclusion, however, does not alleviate the need for site-specific verification of jurisdiction, such as confirmation of wetland characteristics, whether the wetlands abut another jurisdictional water and other issues typically addressed during a jurisdictional determination process.

The proposed definition of ''adjacent wetlands'' would not require surface water exchange between wetlands and the jurisdictional waters they abut to create the jurisdictional link, consistent with case law and for ease of implementation. *See Riverside Bayview,* 474 U.S. at 129 (''The plain language of the [Corps' 1977] regulation refutes the Court of Appeals' conclusion that inundation or 'frequent flooding' by the adjacent body of water is a *sine qua non* of a wetland under the regulation.''). Rather, as proposed, a wetland that directly touches an otherwise jurisdictional water at a point or side is ''adjacent'' regardless of where ''the moisture creating the wetlands . . . find[s] it source.'' *Rapanos,* 547 U.S. at 772 (Kennedy, J., concurring), *citing Riverside Bayview,* 474 U.S. at 135.

In addition to wetlands that actually abut other jurisdictional waters, the proposed definition considers wetlands to be ''adjacent'' when they have a direct hydrologic surface connection to jurisdictional waters during a typical year. *See Rapanos,* 474 U.S. at 732 (Scalia, J., plurality) (recognizing that the term ''the waters'' within ''the waters of the United States'' includes ''the flowing or moving masses, as of waves or *floods,* making up . . . streams or bodies'') (emphasis added) (internal quotations omitted); *id.* at 770 (Kennedy, J., concurring) (''the term

'waters' may mean '*flood* or inundation' events that are impermanent by definition'') (emphasis added) (internal citations omitted). During times of inundation occurring from a jurisdictional water to a wetland in a typical year, ''adjacent wetlands'' are indistinguishable from and inseparably bound up with other waters of the United States. In addition to regular flooding, such direct hydrologic surface connections during a typical year may be the result of perennial or intermittent flow between a wetland and a jurisdictional water. Surface water from a wetland that overtops a berm and connects the wetland to a jurisdictional water or connections from a wetland to a jurisdictional water through upland or through a barrier as mediated by a culvert, tide gate, or similar structure would constitute direct hydrologic surface connections so long as such connections are perennial or intermittent as defined in this proposal and occur in a typical year. As proposed, a direct hydrologic surface connection may occur as either confined or unconfined perennial or intermittent flow. Wetlands with a direct hydrologic surface connection to other jurisdictional waters are indistinguishable from and inseparably bound up with those waters of the United States and are adjacent wetlands under this proposal. Ephemeral connections as well as subsurface connections between wetlands and jurisdictional waters do not constitute a direct hydrologic surface connection according to this proposal.

A mere hydrologic connection between a nonnavigable, isolated, intrastate wetland and a jurisdictional water, however, may be insufficient to establish adjacency under the proposed rule. For instance, the fact that a wetland may be connected to the navigable water by flooding, on average, once every 100 years does not satisfy the proposed ''adjacent wetlands'' definition. To be adjacent, a wetland that is otherwise physically separated from a ''water of the United States'' would need to have a direct hydrologic surface connection to a jurisdictional water *during a typical year;* ecological connections between physically separated wetlands and otherwise jurisdictional waters cannot be used to determine adjacency according to this proposal. *See* 547 U.S. at 741–42 (Scalia, J., plurality) (''*SWANCC* found such ecological consideration irrelevant to the question whether physically isolated waters come within the Corps' jurisdiction.''). The agencies may determine that a direct hydrologic surface connection exists during a typical year using, for example, USGS stream gage records, channel-forming discharge recurrence interval, and/or wetland surface water level records. Physically remote isolated wetlands, however, would not be adjacent wetlands under this proposal.

In addition, a jurisdictional wetland divided by an artificial feature, such as a road, would be treated as a single wetland and remain jurisdictional unless there is no direct hydrologic surface connection during a typical year between the wetlands present on either side of that feature. Without such direct hydrologic surface connection, only that wetland (*i.e.,* that portion of the original wetland) which abuts or has a direct hydrologic surface connection to another ''water of the United States'' would be jurisdictional as adjacent, even if there is a subsurface hydrologic connection between the wetlands present on either side of the road. If there is a direct hydrologic surface connection between the wetlands on either side of the road during a typical year, such as where the road has a low-flow crossing or another direct hydrologic surface connection provided by a conduit, such as a culvert, as well as where there is a direct hydrologic surface connection via overtopping of the road, the wetlands on either side of the road may be treated as one wetland and would be jurisdictional as adjacent in its entirety.

For purposes of adjacency under the proposed rule, the entire wetland would be considered adjacent if any portion of the wetland abuts or has a direct hydrologic surface connection to another ''water of the United States,'' regardless of the size and extent of the wetland. For example, if a portion of one side of a wetland physically touches a tributary, then the wetland would be jurisdictional in its entirety. Similarly, if any part of a wetland has a direct hydrologic surface connection to a jurisdictional water, the entire wetland would be considered adjacent. Interpreting the entire wetland to be adjacent if any portion of it satisfies the proposed ''adjacent wetlands'' definition is consistent with longstanding practice. The agencies have found this approach to be simpler and easier to implement in the field than establishing a means of bifurcating wetlands. An adjacent wetland that changes classification (*e.g.,* as defined in Cowardin *et al.* 1979) due to landscape position, hydrologic inundation, or other factors, such as changing from salt marsh to brackish to freshwater wetland, would remain jurisdictional as one adjacent wetland.

The term ''adjacent wetlands'' as proposed includes reference to ''upland.'' The term upland has been used in program implementation for at least a decade following the agencies' *Rapanos* Guidance and thus is familiar to the regulated community and field staff. The term ''upland'' is defined in this proposal as any land that does not meet the three-part test (*i.e.,* hydrology, hydrophytic vegetation, and hydric soils) for wetland under normal circumstances, and as the ordinary meaning of the term clearly indicates, would not include other ''waters of the United States.''

Wetlands separated from other ''waters of the United States'' by upland or by dikes, barriers, or similar structures would not be adjacent and would not be jurisdictional wetlands under the proposed rule, unless there is a direct hydrologic surface connection between the wetland and those waters through or over such structures during a typical year. This is because upland or dikes, barriers, or similar structures typically block most surface water flow. However, if there is a direct hydrologic surface connection during a typical year between the wetland and other ''waters of the United States'' through the dike, barrier, or similar structure, such as through a culvert or tide gate, the wetland would remain adjacent under this proposed rule. A direct hydrologic surface connection can also result from water in the wetland overtopping a berm or barrier to connect the wetland via perennial or intermittent flow to a jurisdictional water in a typical year.

Adjacent wetlands under this proposal would include wetlands with alternating hydroperiods and seasonal wetlands with vegetation shifts so long as the delineated boundary of the wetland abuts a jurisdictional water. The delineated boundary of a seasonal wetland remains constant, even though all three delineation factors may not be apparent year-round, as is current practice. This proposed approach acknowledges seasonal variation in visible wetland characteristics as well as the variation in hydrology and climatic conditions across the country. For example, wetlands with alternating hydroperiods that abut another ''water of the United States'' in the arid West may only have hydrology present for three months while those wetlands in the southeast may have hydrology present for nine months. Wetland hydrology indicators involving direct observation of surface water or saturated soils often are present only during the normal wet portion of the growing season and may be absent during the dry season. Also, seasonal wetlands

with vegetation shifts may display hydrophytic vegetation abutting another ''water of the United States'' except during the dry season. Certain wetland indicators may not be present year-round in a typical year, such as indicators of hydrophytic vegetation, hydric soil, or wetland hydrology periodically due to normal seasonal or annual variability.

Where wetlands in a complex of wetlands have a continuous physical surface connection to one another such that upland boundaries or dikes, barriers, or other structures cannot be drawn to distinguish them as physically separated, the agencies would evaluate these wetlands as a single wetland under the proposed rule. If any portion of these physically interconnected wetlands is adjacent to another ''water of the United States,'' the wetland would be considered adjacent for purposes of this proposed rule.

Given the focus of the proposed adjacent wetlands definition based on the ordinary meaning of the term ''waters,'' common principles from case law, and the limitations on federal authority embodied in section 101(b) of the Act, this proposed definition does not include subsurface hydrologic connectivity as a basis for determining adjacency. The agencies are concerned that the use of shallow subsurface connection could encroach on State and tribal authority over land and water resources and could be confusing and difficult to implement, including in determining whether a subsurface connection exists and to what extent. The categorical inclusion of all wetlands that abut other ''waters of the United States'' and all wetlands with a direct hydrologic surface connection to other jurisdictional waters will invariably include some wetlands that also connect to those waters through shallow subsurface flow. Physically remote wetlands and wetlands lacking a direct hydrologic surface connection would be reserved to regulation by States and Tribes as land and water resources of those States and Tribes.

4. What are the specific issues upon which the agencies are seeking comment?

While the public may comment on all aspects of the agencies' proposed rule, the agencies have proposed a number of ways to try to address and clarify jurisdiction over wetlands as described above and are seeking comment. As a threshold matter, the agencies solicit comment on their interpretations of *Riverside Bayview, SWANCC,* and the *Rapanos* opinions, including specifically the proposal to provide regulatory certainty through categorical treatment of adjacent wetlands rather than on the case-by-case application of Justice Kennedy's significant nexus test.

While the agencies are not proposing to change the longstanding regulatory definition of ''wetlands,'' they request comment on whether including in the regulatory text that areas must satisfy all three wetland delineation criteria (*i.e.,* hydrology, hydrophytic vegetation, and hydric soils) under normal circumstances to qualify as wetlands would provide additional clarity. The agencies also seek comment on whether there are terms or phrases within the existing wetlands definition that require clarification (*e.g.,* ''under normal circumstances''), and if so how such terms might be defined and if clarification should be provided, for example, via regulatory text or future agency guidance.

The agencies are soliciting comment on other potential interpretations of adjacency, such as including a distance limit to establish the boundaries between Federal and State waters, which several pre-proposal commenters recommended. For example, some commenters have suggested using distance from another jurisdictional water as the basis for asserting jurisdiction over wetlands, even if those wetlands do not abut or have a direct hydrologic surface connection to such waters in a typical year. Others have suggested establishing a jurisdictional cut-off in a contiguous wetland for administrative purposes rather than extending jurisdiction to the outer limits of the wetland where all three wetland characteristics are no longer satisfied. The agencies solicit comment on these alternate suggestions.

The agencies are also soliciting comment on whether the definition of ''adjacent wetlands'' should not include reference to dikes, barriers, and similar structures and instead those terms should be included in the definition of ''upland.'' The definition of ''upland'' would then mean, ''any land area, including dikes, barriers, or similar structures, that under normal circumstances does not satisfy all three wetland delineation criteria (*i.e.,* hydrology, hydrophytic vegetation, hydric soils) identified in paragraph (c)(15) of this section, and does not lie below the ordinary high water mark or the high tide line of a water identified in paragraphs (a)(1)–(6) of this section.'' Upland would include both natural and artificial land areas meeting the definition.

The agencies are also soliciting comment on an alternate approach, whereby wetlands that are separated from another jurisdictional water by upland or a dike, barrier or other similar structure would not be jurisdictional even if they have a direct hydrologic surface connection in a typical year to an otherwise jurisdictional water. Unlike the proposed approach, this alternative would not allow for seasonal overtopping, for example, to provide for a direct hydrologic surface connection during a typical year, but wetlands would be jurisdictional if the direct hydrologic surface connection is through the upland or structure (*e.g.,* through a culvert). The agencies solicit comment on whether this approach is more consistent with the considerations articulated above than the approach in the proposed definition.

The agencies note that identifying remotely whether wetlands abut a jurisdictional water can be challenging, especially with 2–D aerial imagery and the resolution of remote tools. The agencies are soliciting comment on which indicators can be used to determine whether a wetland abuts a jurisdictional water, and whether surface hydrology indicators or remote tools exist that may be helpful. The agencies believe that it is also important to consider weather and climatic conditions, *i.e.,* review recent precipitation and climate records, to ensure adjacency is not being assessed during a period of drought or after a major precipitation or infrequent flood event. These climatic assessments could employ the same tools used to evaluate whether it is a ''typical year'' for purposes of determining whether a tributary is jurisdictional.

The agencies seek comment on whether it is appropriate to describe a ''direct hydrologic surface connection'' as occurring due to inundation from an (a)(1)–(5) water or via perennial or intermittent flow between a wetland and an (a)(1)–(5) water in a typical year. Additionally, the agencies request comment on whether other types of hydrologic surface connections between wetlands and jurisdictional waters could constitute a ''direct hydrologic surface connection'' or if and under what circumstances subsurface water connections between wetlands and jurisdictional waters could be used to determine adjacency.

The agencies are also soliciting comment on other tools that may be helpful in implementation of the proposed adjacent wetlands category. For example, the agencies seek comment as to whether tools such as NRCS Soil Surveys (Flooding Frequency Classes), tidal gauge data, and site-specific modeling (*e.g.,* Hydrologic Engineering Centers River System

Analysis System or HEC–RAS), as well as historical evidence, such as photographs, prior delineations, topographic maps, and existing site characteristics, could be helpful in implementation.

H. Waters and Features That Are Not Waters of the United States

1. What are the agencies proposing?

In paragraph (b) of the proposal, the agencies propose eleven exclusions from the definition of ''waters of the United States.'' Specifically, under this proposal, any water not enumerated in paragraphs (a)(1) through (6) would not be a water of the United States. The proposed rule would exclude groundwater, including groundwater drained through subsurface drainage systems. This proposed rule would exclude ephemeral surface features and diffuse stormwater run-off such as directional sheet flow over upland. This proposal would exclude all ditches from the definition of ''waters of the United States'' except those ditches identified in paragraph (a)(3) of the proposed rule. Jurisdictional ditches identified in paragraph (a)(3) include: (1) Ditches that satisfy any of the conditions identified in paragraph (a)(1); (2) ditches constructed in a tributary as long as those ditches also satisfy the conditions of the tributary definition; and (3) ditches constructed in an adjacent wetland as long as those ditches also satisfy the conditions of the tributary definition. See the Section III.E for further discussion on the types of ditches which would be considered ''waters of the United States'' under this proposed rule. All other ditches are proposed to be excluded.

Prior converted cropland has been excluded from this definition since 1993 and would continue to be excluded. The agencies include in the proposed rule a definition of ''prior converted cropland'' and an explanation of when a prior converted cropland designation would no longer be applicable for purposes of the CWA. The agencies also propose to exclude artificially irrigated areas, including fields flooded for rice or cranberry growing, that would revert to upland should application of irrigation water to that area cease. In addition, the agencies propose to exclude artificial lakes and ponds constructed in upland, such as water storage reservoirs, farm and stock watering ponds, settling basins, and log cleaning ponds, as long as they are not subject to jurisdiction under either paragraph (a)(4) or (a)(5) of the proposed rule. The proposed rule would also exclude water-filled depressions created in upland incidental to mining or construction activity, and pits excavated in upland for the purpose of obtaining fill, sand, or gravel. The agencies also propose to exclude stormwater control features excavated or constructed in upland to convey, treat, infiltrate, or store stormwater run-off. Also proposed to be excluded are wastewater recycling structures constructed in upland, such as detention, retention and infiltration basins and ponds, and groundwater recharge basins. Waste treatment systems have been excluded from this definition since 1979, and they would continue to be excluded under this proposal; however, waste treatment systems are being defined for the first time in this proposed rule under paragraph (c). A waste treatment system would include all components, including lagoons and treatment ponds (such as settling or cooling ponds), designed to convey or retain, concentrate, settle, reduce, or remove pollutants, either actively or passively, from wastewater prior to discharge (or eliminating any such discharge). A waste treatment system requires a section 402 permit if it discharges into a water of the United States.

2. Why are the agencies proposing this approach?

These proposed exclusions generally reflect the agencies' current practice, and their inclusion in the proposed rule would further the agencies' goal of providing greater clarity over which waters are and are not regulated under the CWA. Just as the proposed categorical assertions of jurisdiction over tributaries and adjacent wetlands would simplify the jurisdiction issue, the categorical exclusions would likewise simplify the process, and they reflect the agencies' proposed determinations of the lines of jurisdiction based on the case law and the agencies' long-standing practice and technical judgment that certain waters and features are not subject to the CWA.

The plurality opinion in *Rapanos* noted that there were certain features that were not primarily the focus of the CWA, such as channels that periodically provide drainage for rainfall. *See* 547 U.S. at 734. During outreach for this proposed rule, many States, regional groups, and national associations requested ''distinct,'' ''specific,'' and ''clear'' exclusions from the definition of ''waters of the United States.'' In this proposed rule, the agencies propose to thus draw lines and articulate that certain waters and features would not be subject to the jurisdiction of the CWA, consistent with the agencies' proposed interpretation of this statutory term.

Importantly, the agencies are proposing that all waters and features identified in paragraph (b) as excluded would not be ''waters of the United States.'' As stated in paragraph (b)(1) of the proposed rule, waters or water features not enumerated in paragraphs (a)(1) through (6) would not be a water of the United States. The agencies are proposing to take this approach to avoid suggesting that but for an applicable exclusion, such features could be jurisdictional. This proposed approach comprehensively excludes all waters and features the agencies do not intend to include as ''waters of the United States.'' Different features are called different names in different parts of the country, so this approach is intended to also eliminate the risk of confusion.

In proposed paragraph (b)(2), the agencies would exclude groundwater, including groundwater drained through subsurface drainage systems. The agencies have never interpreted ''waters of the United States'' to include groundwater and would continue that practice through this proposed rule by explicitly excluding groundwater.

In proposed paragraph (b)(3), the agencies would exclude ephemeral features and diffuse stormwater run-off, including directional sheet flow over upland. Such features would not be jurisdictional under the proposed terms of paragraph (a) or the proposed definitions in paragraph (c). They would be specifically excluded in the proposed rule to avoid confusion. This proposed exclusion would further highlight and clarify that such features are not tributaries under the proposed rule.

The proposed ditch exclusion in paragraph (b)(4) is intended to be clearer for the regulated public to identify and more straightforward for agency staff to implement than current practice. The agencies have proposed a clear statement that all types of ditches would be excluded except for three instances (see paragraph (a)(3) and the Section III.E for further information on ditches). First, ditches that are (a)(1) waters would be ''waters of the United States.'' Second, ditches constructed in a tributary and that continue to satisfy the conditions of the tributary definition after alteration would be ''waters of the United States.'' And third, ditches constructed in an adjacent wetland that satisfy the conditions of the tributary definition would be ''waters of the United States.'' Many States, regional groups and national associations that commented during the Federalism consultation and during the agencies' general outreach efforts noted that the definition of ''waters of the United States'' should exclude ditches. This

approach reasonably balances the exclusion with the need to preserve jurisdiction over tributaries and adjacent wetlands as defined in this proposal. With this proposed approach, the agencies seek to address the kinds of ditches of concern to many stakeholders.

The definition of ''waters of the United States'' would continue to exclude prior converted cropland in this proposed rule. The agencies are proposing to move this exclusion to paragraph (b)(5), add a definition of ''prior converted cropland'' in paragraph (c)(8), and clarify that the prior converted cropland exclusion would no longer be applicable when the cropland is abandoned *and* the land has reverted to wetlands, as that term is defined in paragraph (c)(15). Under this proposed rule, prior converted cropland is considered abandoned if it is not used for, or in support of, agricultural purposes at least once in the immediately preceding five years. Agricultural purposes include land use that makes the production of an agricultural product possible, including but not limited to grazing and haying. This proposed rule would also clarify that cropland that is left idle or fallow for conservation or agricultural purposes for any period of time remains in agricultural use, and therefore maintains the prior converted cropland exclusion. The agencies believe that this clarification is necessary to ensure that cropland enrolled in long-term and other NRCS conservation programs administered by the United States or by State and local agencies that prevents erosion or other natural resource degradation does not lose its prior converted cropland designation as a result of implementing conservation practices. The five-year timeframe for maintaining agricultural purposes is consistent with the 1993 preamble. 58 FR 45033. It is also consistent with the five-year timeframe regarding validity of a jurisdictional determination. *See* 2005 Corps Regulatory Guidance Letter (RGL) 05–02. These proposed revisions are intended to clarify the scope and application of the prior converted cropland exclusion and reaffirm key principles from the 1993 preamble. 58 FR 45033.

In 1993, the agencies categorically excluded prior converted cropland from the definition of ''waters of the United States.'' The 1993 preamble defined prior converted cropland as ''areas that, prior to December 23, 1985, were drained or otherwise manipulated for the purpose, or having the effect, of making production of a commodity crop possible [and that are] inundated for no more than 14 consecutive days during the growing season.'' 58 FR 45031. As explained in detail in the 1993 preamble, the agencies' objective is to protect the nation's waters, including the navigable waters, and due to the degraded and altered nature of prior converted cropland, the agencies determined that such lands should not be treated as jurisdictional wetlands for purposes of the CWA. 58 FR 45032. The 1993 preamble also set out a mechanism to ''recapture'' prior converted cropland into the section 404 program when the land has been abandoned and wetland features return. 58 FR 45034. This approach is consistent with the principles in the 1990 Corps RGL 90–7. Although included in the 1993 preamble and RGL 90–7, these principles have not been incorporated into the text of any promulgated rule. This rulemaking therefore represents the first time the agencies are proposing regulatory language to clarify the meaning of ''prior converted cropland,'' the application of the exclusion, and a recapture mechanism based on abandonment and reversion to wetlands.

Historically, the agencies have attempted to create consistency between the CWA and the Swampbuster program for prior converted cropland. The agencies continue to believe that consistency across these programs is important for the regulated community (*see* 58 FR 45033), and therefore propose to continue excluding prior converted cropland from the definition of waters of the United States. By incorporating the abandonment principles from the 1993 preamble, this proposal remains consistent with the concepts underlying the Swampbuster program but differs in implementation from certain aspects of USDA's current program. Incorporating the abandonment principle, as opposed to a pure ''change in use'' policy (described below), is important for the agencies to appropriately manage wetland resources while providing better clarity to the farming community.

When the 1993 preamble was published, the abandonment recapture principle was consistent with USDA's implementation of the Swampbuster program. Three years later, the 1996 Swampbuster amendments modified the abandonment principle and incorporated a ''change in use'' policy. Under the new policy, prior converted cropland would continue to be regulated as such even if wetland characteristics returned because of lack of maintenance of the land or other circumstances beyond the owner's control, ''as long as the prior converted cropland continues to be used for agricultural purposes.'' Conf. Rep. No. 104–494, at 380 (1996). In 2005, the Army and USDA issued a joint Memorandum to the Field (the 2005 Memorandum) in an effort to again align the CWA 404 program with Swampbuster. The 2005 Memorandum provided that, ''certified [prior converted] determination made by [USDA] remains valid as long as the area is devoted to an agricultural use. If the land changes to a non-agricultural use, the [prior converted] determination is no longer applicable and a new wetland determination is required for CWA purposes.''

The 2005 Memorandum did not clearly address the abandonment principle that the agencies had been implementing since the 1993 rulemaking. The change in use policy was also never promulgated as a rule and was declared unlawful by one district court because it effectively modified the 1993 preamble language without any formal rulemaking process. *New Hope Power Co.* v. *U.S. Army Corps of Eng'rs,* 746 F. Supp. 2d 1272, 1282 (S.D. Fla. 2010). Implementing the 2005 Memorandum created other challenges for the agencies and the regulated community. For example, because the 2005 Memorandum did not clearly address whether or how the abandonment principles should be applied in prior converted cropland cases, neither the agencies nor the regulated community could be certain which approach would be applied to a specific case. If this proposed exclusion is finalized, the Army would take action to withdraw the 2005 Memorandum. It is the agencies' intent that this proposed rule will clarify the prior converted cropland issue and provide regulatory certainty.

The following features also would not be ''waters of the United States'' under this proposed rule:

- Artificially irrigated areas, including fields flooded for rice or cranberry growing, that would revert to upland should application of irrigation water to that area cease (paragraph (b)(6));
- Artificial lakes and ponds constructed in upland (including water storage reservoirs, farm and stock watering ponds, settling basins, and log cleaning ponds) which are not identified in paragraph (a)(4) or (a)(5) of this section (paragraph (b)(7)); and
- Water-filled depressions created in upland incidental to mining or construction activity, and pits excavated in upland for the purpose of obtaining fill, sand or gravel (paragraph (b)(8)).

Paragraphs (b)(6), (7), and (8) of the proposed rule identify features and waters that the agencies have identified as generally not ''waters of the United States'' in previous preambles. The agencies intend that codifying these longstanding practices would further the agencies' goals of providing greater clarity and predictability for the regulated public and the regulators. Several of these exclusions use the phrase ''upland.'' In keeping with the goal of providing greater clarity, the agencies have proposed a definition of ''upland'' in paragraph (c)(13). It is important to note that a ''water of the United States'' would not be considered ''upland'' just because it lacks water at a given time. Similarly, an area may remain ''upland'' even if it is wet after a rainfall or flood event. Also, the upland requirement would not apply to all exclusions under paragraph (b). Those waters/features under proposed paragraph (b) that do contain the stipulation that they must be created in upland to be excluded must be created wholly in upland. Features not constructed wholly in upland could meet the proposed definition of ''waters of the United States,'' unless otherwise excluded under another part of paragraph (b). The agencies note that the mere interface between the excluded feature constructed wholly in upland and a jurisdictional water would not make that feature jurisdictional. For example, a ditch constructed wholly in upland that connects to a tributary would not be considered a jurisdictional ditch. Finally, a proposed excluded feature that develops wetland characteristics within the confines of the water/feature would remain excluded from the definition of ''waters of the United States.''

In proposed paragraph (b)(7) regarding artificial lakes and ponds constructed in upland, the agencies have removed language regarding ''use'' of the ponds, including the term ''exclusively,'' which were used in the 1986 and 1988 preambles. In most cases, the ''use'' of the pond is captured in its name. More importantly, the agencies recognize that artificial lakes and ponds are often used for more than one purpose and can have a variety of beneficial purposes, including water retention or recreation. The proposed exclusion reflects the agencies' practice and would ensure that waters the agencies have historically not treated as jurisdictional would not become so because of another incidental beneficial use. In the text of the proposed exclusion, the agencies are also clarifying that these features would not be excluded if they are jurisdictional impoundments because altering a water by impounding it would not change the water's jurisdictional status, consistent with longstanding agency practice. However, when an applicant receives a permit to impound a water of the United States in order to construct a waste treatment system (as excluded under (b)(11)), the agencies are affirmatively relinquishing jurisdiction over the resulting waste treatment system as long as it is used for this permitted purpose, consistent with longstanding practice. Also consistent with longstanding practice, waters upstream of the waste treatment system may still be considered jurisdictional where they meet the proposed definition of ''waters of the United States.''

In proposed paragraph (b)(8), the proposed rule includes several refinements to the existing 1986 and 1988 preamble language related to the exclusion for water-filled depressions created in upland as a result of certain activities. In addition to construction activity, the agencies have also proposed to exclude water-filled depressions created in upland incidental to mining activity. This is consistent with the exclusion in the 2015 Rule and with the agencies' 1986 and 1988 preambles, which generally excluded pits excavated for obtaining fill, sand or gravel, and the agencies believe there is no need to distinguish between features based on whether they are created by construction or mining activity.

In proposed paragraph (b)(9), the agencies would exclude stormwater control features excavated or constructed in upland to convey, treat, infiltrate, or store stormwater runoff. The agencies' practice is to view stormwater control measures that are not built in ''waters of the United States'' as non-jurisdictional. Conversely, the agencies currently view some waters, such as channelized streams with intermittent or perennial flow, as jurisdictional even where used as part of a stormwater management system. Nothing in the proposed rule is intended to change that practice. Rather, this exclusion would clarify the appropriate limits of jurisdiction relating to these systems. A key element of the exclusion is whether the feature or control system was built in upland and whether it conveys, treats, or stores stormwater. Certain features, such as curbs and gutters, may be features of stormwater collection systems, but have never been considered waters of the United States. Stormwater control features have evolved considerably over the past several years, and their nomenclature is not consistent, so in order to avoid unintentionally limiting the proposed exclusion, the agencies have not included a list of excluded features in the rule. The proposed rule is intended to exclude the diverse range of stormwater control features that are currently in place and may be developed in the future.

Traditionally, stormwater controls were designed to direct runoff away from people and property as quickly as possible. Cities built systems to collect, convey, or store stormwater, using structures such as curbs, gutters, and sewers. Retention and detention stormwater ponds were built to store excess stormwater until it could be more safely released. More recently, treatment of stormwater has become more prevalent to remove pollutants before the stormwater is discharged. Even more recently, cities have turned to green infrastructure, using existing natural features or creating new features that mimic natural hydrological processes that work to infiltrate or evapo-transpirate precipitation, to manage stormwater at its source and keep it out of the conveyance system. These engineered components of stormwater management systems can address both flood control and water quality concerns, as well as provide other benefits to communities. This proposed rule is designed to avoid disincentives to this environmentally beneficial trend in stormwater management practices.

The agencies propose to exclude wastewater recycling structures constructed in upland, such as detention, retention and infiltration basins and ponds, and groundwater recharge basins in paragraph (b)(10). This proposed exclusion clarifies the agencies' current practice that waters and water features used for water reuse and recycling would not be jurisdictional when constructed in upland. The agencies recognize the importance of water reuse and recycling, particularly in areas like California and the Southwest where water supplies can be limited and droughts can exacerbate supply issues. This proposed exclusion responds to numerous commenters and is intended to avoid discouraging or creating barriers to water reuse and conservation. Many commenters noted the growing interest in and commitment to water recycling and reuse projects. Detention and retention basins can play an important role in capturing and storing water prior to beneficial reuse. Similarly, groundwater recharge basins and infiltration ponds are becoming more prevalent tools for water reuse and recycling. These features are used to

collect and store water, which then infiltrates into groundwater via permeable soils. Though these features are often created in upland, they are also often located in close proximity to tributaries or other larger bodies of water. The proposed exclusion in paragraph (b)(10) would codify longstanding agency practice and encourage water management practices that the agencies recognize are important and beneficial.

Proposed paragraph (b)(11) would exclude waste treatment systems. The waste treatment system exclusion has existed since 1979, and the agencies are continuing such exclusion under this proposal. The agencies are also for the first time proposing a definition of ''waste treatment system'' under paragraph (c)(14) to clarify which waters and features are considered part of a waste treatment system and therefore excluded. Continuing current practice, any entity with a waste treatment system would need to comply with the CWA by obtaining a section 404 permit if constructed in waters of the United States, and a section 402 permit for discharges from the waste treatment system into waters of the United States. The agencies intend for this exclusion to apply only to waste treatment systems constructed in accordance with the requirements of the CWA and to all waste treatment systems constructed prior to the 1972 CWA amendments. One proposed ministerial change is the deletion of a cross-reference in the current language to an EPA regulation that no longer exists.

Some pre-proposal commenters suggested the agencies clarify how the waste treatment system exclusion is currently implemented. Many comments raised questions about stormwater systems and wastewater reuse and whether such facilities are considered part of a complete waste treatment system for purposes of the waste treatment system exclusion. For clarity, the agencies propose related exclusions in paragraphs (b)(9) and (b)(10) and propose to add settling basins and cooling ponds to the definition of ''waste treatment system'' in paragraph (c)(14). The agencies note that cooling ponds that are created under section 404 in jurisdictional waters and that have section 402 permits are and would continue to be subject to the waste treatment system exclusion under the proposed rule. Cooling ponds created to serve as part of a cooling water system with a valid state permit constructed in waters of the United States prior to enactment of the 1972 amendments of the CWA and currently excluded from jurisdiction would also remain excluded under the proposed rule.

3. How might the agencies implement this approach?

The agencies propose to include an exclusion for groundwater under paragraph (b)(2), including groundwater drained through subsurface drainage systems. The agencies added the subsurface drainage clarification to specify that even when groundwater is channelized in subsurface systems, like tile drains used in agriculture, it still remains subject to the exclusion. However, the exclusion would not apply to surface expressions of groundwater, such as where groundwater emerges on the surface and becomes baseflow in intermittent or perennial streams.

The proposed rule would exclude ephemeral features and diffuse stormwater run-off including directional sheet flow over upland under proposed paragraph (b)(3). This exclusion would include ephemeral flows, swales, and erosional features, including gullies and rills, as non-jurisdictional features. Tributaries can be distinguished from these excluded features by the flow regime proposed in the definition of ''tributary.'' Tributaries would have intermittent or perennial flow while these proposed excluded features would have ephemeral flow. It should be noted that some streams are colloquially called ''gullies'' or the like even when they exhibit the characteristics of a tributary; regardless of the name they are given locally, waters that meet the definition of ''tributary'' would not be excluded ephemeral features.

With respect to implementing the proposed ditch exclusions consistent with the proposed rule, that reach of a ditch that meets any of the three categories in paragraph (a)(3) would be considered a ''water of the United States.'' The jurisdictional status of other reaches of the same ditch would have to be assessed based on the specific facts and under the terms of the proposed rule to determine the jurisdictional status of the ditch. For example, a ditch that is constructed in a tributary would not be an excluded ditch under proposed paragraph (b)(4) so long as it satisfies the conditions of the tributary definition, and a ditch is constructed in a tributary when at least a portion of the tributary's original channel has been physically moved. Further, the exclusion of a ditch does not affect the possible status of the ditch as a point source. The agencies believe the proposed ditch exclusion included in the proposed rule would address the majority of irrigation and drainage ditches, including most roadside and other transportation ditches, as well as agricultural ditches.

For the proposed prior converted cropland exclusion, the agencies propose to clarify that when cropland has been abandoned and wetlands have returned, any prior converted cropland designation for that site would no longer be valid for purposes of the CWA. In general, the Corps' current practice has been to defer to certifications of prior converted cropland made by the USDA for areas in agricultural use; but in instances when land has been proposed to change from agricultural to non-agricultural use, the Corps has made new jurisdictional determinations, regardless of any previous designation of prior converted cropland or if an actual change in use has occurred. In other instances when cropland may have been abandoned, the Corps may apply the test from the 1993 preamble. This proposed rule would clarify that the Corps would only apply abandonment principles consistent with the 1993 preamble and would no longer apply the change in use analysis. Under the proposed rule, the Corps must first determine if the land has been ''abandoned.'' Prior converted cropland will be considered abandoned if it is not used for, or in support of, agricultural purposes at least once in the immediately preceding five years. If the Corps determines that the land is abandoned, then it must evaluate the current condition of the land to determine whether wetlands conditions have returned. If wetlands are currently present on the property, the Corps must determine whether the wetlands are waters of the United States, consistent with this proposed rule.

As the term ''prior *converted* cropland'' suggests, and as stated in the preamble to the 1993 Rule, land properly designated prior converted cropland has typically been so extensively modified from its prior condition that it no longer exhibits wetland hydrology or vegetation, and no longer performs the functions it did in its natural and original condition as a wetland. 58 FR 45032. It is often altered and degraded, with long-term physical and hydrological modifications that substantially reduce the likelihood of reestablishment of hydrophytic vegetation. Consistent with longstanding Corps policy and wetland delineation procedures, if a former wetland has been lawfully manipulated to the extent that it no longer exhibits wetland characteristics under normal circumstances, it would not be a jurisdictional wetland under the CWA. The altered nature of prior converted

cropland and its conditions constitute the ''normal circumstances'' of such areas. The agencies expect the majority of prior converted cropland in the nation to fall into this category and not be subject to CWA regulation, even after it is abandoned.

However, at least some abandoned prior converted cropland may, under normal circumstances, meet the proposed definition of ''wetlands'' under paragraph (c)(15). To determine whether wetland characteristics are present under ''normal circumstances,'' and whether the site contains waters of the United States as defined under this proposed rule, the agencies could, pursuant to existing regulations and guidance, and in accordance with this proposed rule, prepare a new jurisdictional determination for abandoned prior converted cropland. Such a determination would also evaluate whether the wetland is adjacent within the meaning of paragraph (c)(1) of this proposed rule.

The agencies consider rulemaking to be appropriate here in order to clarify the definition of ''prior converted cropland'' and to provide regulatory certainty over when such lands are no longer eligible for the CWA exclusion. The USDA is responsible for making the determination as to whether land is prior converted cropland for its program purposes, which the agencies would adopt for purposes of the prior converted cropland exclusion under this proposed rule. The EPA and the Corps enforce the prior converted cropland exclusion for CWA purposes and identify whether lands that are no longer prior converted cropland may be waters of the United States. The EPA and the Corps intend to consult with other federal agencies as appropriate, including USDA, when evaluating whether a parcel of land may no longer be eligible for the CWA prior converted cropland exclusion. The agencies' implementation of the proposed prior converted cropland exclusion for CWA regulatory purposes does not affect USDA's administration of the Swampbuster program or a landowner's eligibility for benefits under that program.

In paragraph (b)(6), the agencies propose to clarify their longstanding view that the artificial irrigation exclusion would only apply to the specific land being directly artificially irrigated, including fields flooded for rice or cranberry growing, which would revert to upland should artificial irrigation cease; it is not the case that all waters within watersheds where irrigation occurs would be excluded. Historically, the agencies have taken the position that ponds for rice growing are generally not considered waters of the United States, as reflected in the 1986 preamble and the 2015 Rule. *See* 51 FR 41217. In the past, the agencies have considered those under the artificial lakes or ponds exclusion but propose today to include them in the artificial irrigation category as any wetland crop species, such as rice and cranberry operations, is typically supplied with artificial flow irrigation or similar mechanisms. The agencies take comment on whether this approach is better aligned with existing practices or if rice and cranberry operations should remain in the artificial lakes and ponds exclusion.

In the proposed exclusion at (b)(7) for artificial lakes or ponds, the agencies have also proposed to add farm ponds, log cleaning ponds,[33] and cooling ponds to the list of excluded ponds in the rule for additional clarity. Artificial lakes and ponds created in upland and not subject to jurisdiction under paragraphs (a)(4) or (a)(5) would be excluded. As proposed, this exclusion would also apply to artificial lakes and ponds created as a result of impounding non-jurisdictional waters or features. Conveyances created in upland that are physically connected to and are a part of the proposed excluded feature would also be excluded. The agencies emphasize that ponds that are proposed to be excluded from ''waters of the United States'' could, in some circumstances, be point sources of pollutants subject to section 301 of the Act.

Under proposed paragraph (b)(8), the proposed rule would exclude water-filled depressions created in upland incidental to mining or construction activity, and pits excavated in upland for the purpose of obtaining fill, sand, or gravel. In addition to construction activity, the agencies have proposed to exclude water-filled depressions created in upland incidental to mining activity. Since pits excavated in upland for the purpose of obtaining fill, sand, or gravel, which are forms of mining, were not considered to be ''waters of the United States'' as described in the 1986 and 1988 preambles, the agencies believe mining activities should also be explicitly excluded. This is consistent with the 2015 Rule. In addition, through this proposed exclusion the agencies intend to make clear that such water-filled depressions and pits would typically not become ''waters of the United States.''

[33] Log cleaning ponds are used to float logs for removal of twigs, branches, and large knots.

The agencies also propose to exclude in paragraph (b)(9) stormwater control features excavated or constructed in upland to convey, treat, infiltrate or store stormwater run-off. As stated previously, the proposed rule is intended to exclude the diverse range of stormwater control features that are currently in place and may be developed in the future. This proposed exclusion does not cover ditches, as ditches would be addressed under paragraph (b)(4) of the proposed rule.

Paragraph (b)(10) of the proposed rule clarifies that wastewater recycling structures constructed in upland would be excluded. The agencies propose to include in this exclusion detention and retention basins as well as groundwater recharge basins and infiltration ponds built for wastewater recycling. The proposed exclusion would also cover water distributary structures that are built in upland for water recycling. These features often connect or carry flow to other water recycling structures, for example a channel or canal that carries water to an infiltration pond. The agencies have not considered these water distributary systems jurisdictional.

The existing exclusion for waste treatment systems moves to paragraph (b)(11). As discussed above, the agencies propose to not change the longstanding approach to implementing the waste treatment exclusion. As a result, the agencies would continue to apply the exclusion to systems that are treating water so as to meet the requirements of the CWA. Discharges from these systems to waters of the United States would continue to be subject to regulation by the section 402 permitting program. Similarly, if a waste treatment system is abandoned or otherwise ceases to serve the treatment function for which it was designed, it would not continue to qualify for the exclusion.

The agencies also considered other exclusions recommended by stakeholders that were not added to the proposed rule. The agencies did not propose these additional exclusions because they were either so broadly characterized as to introduce significant confusion and potentially exclude waters that the agencies have consistently determined should be covered as ''waters of the United States,'' they were so site-specific or activity-based that they did not warrant inclusion in the nationally-applicable definition, or they were covered by another exclusion in the proposed rule.

It is important to note that while the waters and features listed in the proposed exclusions would not be ''waters of the United States,'' some of

them may convey perennial or intermittent flow to a downstream jurisdictional water, so that portions of a tributary upstream and downstream of the excluded water may meet the definition of ''tributary'' at (c)(11). For example, when water from a tributary is moved into another jurisdictional water through an excluded ditch, the ditch itself would be excluded from jurisdiction under the proposed rule but the tributary upstream and downstream of such break would remain ''waters of the United States.'' Excluded geographic features, such as ditches, may function as ''point sources'' under CWA section 502(14), so that discharges of pollutants to navigable waters through these features would be subject to other parts of the CWA (*e.g.,* CWA section 402).

4. What are specific issues upon which the agencies are seeking comment?

The agencies seek comment on all aspects of the proposed exclusions. In addition, the agencies solicit comment on whether they should enumerate additional specific exclusions for the purposes of clarity, or whether proposed paragraphs (a) and (b) are sufficiently clear as to account for all of the agencies' intended jurisdictional and non-jurisdictional waters. For example, features that move water (particularly in the arid West) that do not eventually reconnect into a tributary or other jurisdictional water would not be jurisdictional and therefore do not need their own specific exclusion. These features would not meet the definition of ''tributary'' or may meet the currently proposed ditch exclusion as an artificial conveyance of water. However, the agencies seek comment on the jurisdictional status of features (other than the ditches the agencies currently propose to exclude) whose purpose is to move water and which do eventually reconnect to the tributary system.

Further, the agencies seek comment on the clarity of the groundwater exclusion in proposed paragraph (b)(2) and ask commenters to consider whether the exclusion could instead read, ''groundwater, including diffuse or shallow subsurface flow and groundwater drained through subsurface drainage systems.'' The agencies recognize that unique groundwater situations such as shallow aquifers and tile drainage systems exist around the country and welcome comments on the parameters of the groundwater exclusion and any implementation issues that may arise.

With respect to the proposed exclusion for ditches, the agencies solicit comment on whether certain ditches excavated in upland but with perennial or intermittent flow to an (a)(1) through (5) water should be treated as a jurisdictional tributary and why, and if so, what flow regime would apply (*e.g.,* perennial only or both perennial and intermittent). Recognizing that excluded ditches must be used to convey water, the agencies also seek comment on whether the exclusion for ditches should instead focus on particular ditch use, such as roadside, railway, agriculture, irrigation, water supply, or other similar uses, and if so, why. As discussed in Section III.E, the agencies are soliciting comment on available tools to help identify whether a ''ditch'' is artificial or whether it was constructed in a tributary or adjacent wetland.

The agencies solicit comment on the proposed exclusion of prior converted cropland that uses the abandonment principle to determine whether prior converted cropland would be subject to CWA jurisdiction or if the agencies should apply the change in use analysis. The agencies also solicit comment on procedures that may be useful in implementing the proposed exclusion for prior converted cropland. In particular, the agencies solicit comment as to what constitutes ''for, or in support of, agricultural purposes'' as the term applies to the proposed prior converted cropland definition in this proposal. The agencies also seek comment on the kind of documentation a landowner must maintain to demonstrate that cropland has not been abandoned, or in the alternative, that the land has been used for, or in support of, agricultural purposes at least once in the immediately preceding five years. The agencies also solicit comment on what evidence, other than a USDA determination, the agencies should evaluate and rely upon to determine if cropland is eligible for the prior converted cropland exclusion. Finally, the agencies solicit comment on whether the five-year timeframe for maintaining agricultural purposes is appropriate.

The agencies also request comment on whether the proposed exclusion for artificially irrigated areas should include fields flooded to support the production of other wetland crop species in addition to rice and cranberries. Additionally, the agencies seek comment on whether the proposed artificially irrigated areas exclusion should be expanded to include areas flooded to support aquaculture, such as crayfish production.

The agencies also seek comment on whether the waters and features proposed to be excluded in paragraphs (b)(7), (b)(8), (b)(9), and (b)(10) must be constructed *wholly* in upland, not just in upland as provided in the proposed regulatory text, in order for the exclusion to apply and how such a requirement would affect the utility of these proposed exclusions. The agencies also request comment on whether the proposed exclusion in paragraph (b)(9) for stormwater control features should be expanded or clarified to include permitted municipal separate storm sewer systems (MS4s). If so, the agencies request comment on whether the exclusion would apply to the entire MS4 or limited portions thereof. The agencies also request comment on how they might implement such an exclusion.

The agencies intend for the exclusion in paragraph (b)(11) to apply only to lawfully constructed waste treatment systems. The agencies solicit comment on whether greater clarity is needed by including in the rule text that the exclusion only applies to ''lawfully constructed waste treatment systems.''

I. Summary of Proposed Rule as Compared to the 1986 and 2015 Regulations

The agencies are proposing a definition of ''waters of the United States'' that they consider to be superior to both the 1986 and 2015 Rules. The agencies are proposing to revise previous regulatory definitions of this term to distinguish between water that is a ''water of the United States'' subject to Federal regulation under the CWA and water or land that is subject to exclusive State or tribal jurisdiction, consistent with the scope of jurisdiction authorized under the CWA and the direction in that Act to ''recognize, preserve, and protect the primary responsibilities and rights of States to . . . plan the development and use (including restoration, preservation, and enhancement) of land and water resources . . . .'' 33 U.S.C. 1251(b). The Supreme Court has recognized that new administrations may reconsider the policies of their predecessors so long as they provide a reasonable basis for the change in approach. *Nat'l Ass'n of Home Builders* v. *EPA,* 682 F.3d 1032, 1038 & 1043 (D.C. Cir. 2012), *citing FCC* v. *Fox Television Stations, Inc.,* 556 U.S. 502, 514–15 (2009) (Rehnquist, J., concurring in part and dissenting in part). The agencies intend that the proposed revised interpretation of the Federal regulatory scope of the CWA would resolve longstanding confusion over broad and unclear definitions of ''waters of the United States.''

The agencies propose to replace the 2015 Rule for the reasons discussed in the Step 1 proposal and supplemental

notice of proposed rulemaking (SNPRM). *See* 83 FR 32227 (July 12, 2018). In addition, the agencies consider this proposal to adhere more closely than the 2015 Rule to the text of the CWA and its legislative history, to the scope of Congress' authority in promulgating the CWA, to the guiding principles that the Supreme Court has articulated in *Riverside Bayview, SWANCC,* and *Rapanos* for interpreting the reach of the CWA, and because it provides a straightforward definition that would be easier to implement than the 2015 Rule. As discussed in Section II of the preamble, this proposed definition of ''waters of the United States'' reflects the ordinary meaning of the term ''waters,'' such as oceans, rivers, and lakes, as opposed to, as discussed in the Step 1 SNPRM, for example, ephemeral geographic features that are dry almost all of the year, as well as nonnavigable, isolated waters as the 2015 Rule would regulate.

The agencies consider the proposed definitions of ''tributary'' and ''adjacent wetlands'' to be more consistent with the Supreme Court's interpretation of the agencies' authority than the scope of ''waters of the United States'' under the 2015 Rule. Congress' traditional commerce power over navigation extends beyond waters traditionally considered navigable, but it is not unlimited. This proposed interpretation of the scope of ''waters of the United States'' would adhere more closely to the limits of Congress' authority over navigable waters than the 2015 Rule, which allows for jurisdiction over a range of ephemeral waters that meet that regulation's definition of ''tributary'' (as well as physically remote isolated wetlands and other waters) that may be located at great distances from traditional navigable waters, so long as they have indicators of a bed, banks, and ordinary high-water mark and eventually contribute flow to a navigable water.

In addition, this proposal would also adhere more closely than the 2015 Rule to the statute and legislative history of the Act, including the policy articulated in CWA section 101(b) that States should maintain primary responsibility over land and water resources. 33 U.S.C. 1251(b). As noted in the Step 1 SNPRM, many commenters on the 2015 Rule indicated that the potential breadth of the 2015 Rule could interfere with State and local land use planning. They expressed particular concern that the 2015 Rule's use of the 100-year floodplain as a factor to establish jurisdiction and the extension of jurisdiction potentially to water features as far as 4,000 feet from a covered tributary, traditional navigable water, interstate water, or territorial sea extended into the regulatory domain of States, Tribes, and local governments. This proposed definition of ''waters of the United States,'' which would limit CWA jurisdiction over rivers and streams to those that contribute perennial or intermittent flow to traditional navigable waters or territorial seas in a typical year, certain lakes and ponds, and wetlands abutting or having a direct hydrologic surface connection to other jurisdictional waters in a typical year, would restore the authority of States, Tribes, and local governments over large swaths of lands and waters that they have traditionally managed based on the preferences of their citizens. *See SWANCC,* 531 U.S. at 174.

The agencies believe that this proposal is also more consistent with *Rapanos* than the 2015 Rule. It reflects the key concepts in the plurality opinion that limited jurisdiction to relatively permanent waters and wetlands with a continuous surface connection to those waters, 547 U.S. at 742, 751 n.13, as well as addressing Justice Kennedy's concern with respect to regulation of wetlands adjacent to ''drains, ditches, and streams remote from any navigable-in-fact water and carrying only minor water volumes towards it,'' *id.* at 781. The plurality and Justice Kennedy both agreed in principle that the definition of ''waters of the United States'' must consider: (1) The connection of the wetland to the tributary; and (2) the status of the tributary with respect to downstream traditional navigable waters. The plurality refers to the necessary connection of a wetland to a tributary as a ''continuous surface connection'' or ''continuous physical connection,'' as demonstrated in *Riverside Bayview. Id.* at 742, 751 n.13. Justice Kennedy states that the Act requires a water or wetland have a connection in the form of a '''significant nexus' to waters that are or were navigable in fact or that could reasonably be so made.'' *Id.* at 759. Justice Kennedy recognized that ''the connection between a nonnavigable water or wetland and a navigable water may be so close, or potentially so close, that the Corps may deem the water or wetland a 'navigable water' under the Act. In other instances, as exemplified by *SWANCC,* there may be little or no connection.'' *Id.* at 767. The agencies are particularly concerned that the 2015 Rule's reading of Justice Kennedy's significant nexus test exceeds the agencies' authority under the Act, for the reasons discussed in the Step 1 SNPRM.

For example, as the Step 1 SNPRM explains, Justice Kennedy wrote that adjacent ''wetlands possess the requisite nexus, and thus come within the statutory phrase 'navigable waters,' if the wetlands, either alone or in combination with similarly situated lands in the region, significantly affect the chemical, physical, and biological integrity of other covered waters more readily understood as 'navigable.' '' *Id.* at 780. The opinion does not define the terms ''in the region'' or ''similarly situated,'' but it is reasonable to presume that that Justice Kennedy did not intend ''similarly situated'' to be synonymous with ''all'' waters in a region. The 2015 Rule, however, effectively applied the significant nexus test to lakes, ponds, and other waters, not just wetlands, either alone or in combination with other waters in an entire watershed. *See, e.g.,* 80 FR 37106. The agencies are concerned that this broad reading of the significant nexus test relies too heavily on considerations that Justice Kennedy expresses regarding the interconnected nature of waters but fails to balance those ''environmental concerns'' with the ''limits in the statutory text'' the agencies cannot disregard. *See* 547 U.S. at 778. The agencies also do not think that the opinion of a single justice in a complex case should be the primary determinant of federal jurisdiction over potentially large swaths of aquatic resources, particularly an approach that relies on potentially subjective case-by-case application that reduces regulatory certainty for the regulated community and hinders straightforward implementation by regulatory agencies.

The agencies also believe the definitions of ''tributary'' and ''adjacent wetlands'' in this proposed rule better reflect the importance of the term ''navigable'' in ''navigable waters,'' *id.* at 778–79, than did the analogous definitions in the 2015 Rule. This proposal would give effect to the term ''navigable'' by limiting jurisdiction to tributaries and wetlands that have a continuous physical connection, during some part of a typical year, to traditional navigable waters or the territorial seas. In contrast, under the 2015 Rule, all features meeting the ''tributary'' definition, including ordinarily dry channels, are categorically jurisdictional no matter how small, remote, or frequently flowing, and all ''adjacent'' waters and wetlands, such as those located within 1,500 feet of the high tide line of an (a)(1) or (a)(3) water, are categorically jurisdictional. Additionally, the 2015 Rule provides that waters and wetlands as far as 4,000

feet from an (a)(1) through (5) water are jurisdictional if they, either alone or in combination with other similarly situated waters in the region, significantly affect the chemical, physical, or biological integrity of an (a)(1) through (3) water. Such interpretations create considerable tension with Justice Kennedy's understanding of the term ''significant nexus.'' *See id.* at 781–82 (''[I]n many cases wetlands adjacent to tributaries covered by [the Corps' 1986 tributary] standard might appear little more related to navigable-in-fact waters than were the isolated ponds held to fall beyond the Act's scope in *SWANCC.*''). The agencies are concerned that these expansive interpretations of key elements of the definition of ''waters of the United States'' in the 2015 Rule may not comport with the CWA. *See id.* at 778. As the agencies described in the Step 1 SNPRM, the 2015 Rule may have failed to appropriately recognize that the science in the Connectivity Report, while informative and important to consider, is not dispositive in interpreting the statutory reach of ''waters of the United States,'' which is ultimately a legal determination based on the language and structure of the Act and applicable judicial precedent. *Id.*[34]

The agencies are mindful that courts that have considered the merits of challenges to the 2015 Rule have similarly observed that the rule may conflict with Justice Kennedy's opinion in *Rapanos,* particularly the rule's definition of ''tributary.'' *See North Dakota,* 127 F. Supp. 3d at 1056; *Georgia,* 2018 U.S. Dist. LEXIS 97223, at *17. Likewise, the Sixth Circuit stated in response to petitioners' ''claim that the Rule's treatment of tributaries, 'adjacent waters,' and waters having a 'significant nexus' to navigable waters is at odds with the Supreme Court's ruling in *Rapanos*'' that ''[e]ven assuming, for present purposes, as the parties do, that Justice Kennedy's opinion in *Rapanos* represents the best instruction on the permissible parameters of 'waters of the United States' as used in the Clean Water Act, it is far from clear that the new Rule's distance limitations are harmonious with the instruction.'' *In re EPA,* 803 F.3d at 807 & n.3 (noting that ''[t]here are real questions regarding the collective meaning of the [Supreme] Court's fragmented opinions in *Rapanos*''). This proposed tributary definition as a river or stream that contributes perennial or intermittent flow to a traditional navigable water or territorial sea in a typical year, better reflects the limits to the agencies' authority that the plurality, as well as Justice Kennedy, recognized in *Rapanos.*

The proposed definition of ''adjacent wetlands'' in this rulemaking, which encompasses wetlands abutting or having a direct hydrologic surface connection to other jurisdictional non-wetland waters in a typical year also specifically reflects the Supreme Court's longstanding views on the scope of jurisdictional wetlands, as opposed to the far broader interpretation in the 2015 Rule. Since *Riverside Bayview,* the Court has held that the Corps could define ''waters of the United States'' to include wetlands ''actually abut[ting]'' navigable waters, but it has not extended its deference to an agency interpretation to encompass more physically remote wetlands. *Rapanos,* 547 U.S. at 740, 741 n.10 (Scalia, J., plurality), *citing Riverside Bayview,* 474 U.S. at 135, and *SWANCC,* 531 U.S. 159. The 2015 Rule expanded the scope of jurisdictional wetlands well beyond those wetlands ''that form the border of or are in reasonable proximity to other waters of the United States,'' *Riverside Bayview,* 474 U.S. at 134, *quoting* 42 FR 37128 (July 19, 1977), that the Supreme Court has long held to be a permissible exercise of authority of the CWA. For instance, the 2015 Rule defined ''adjacent'' and, in turn, ''neighboring'' to include as categorically jurisdictional all waters located within the 100-year floodplain of an (a)(1) through (5) water and not more than 1,500 feet from the ordinary high water mark of such water. The agencies propose to correct this broad interpretation, thereby maintaining consistency with the Supreme Court's opinions and ensuring the agencies operate within the bounds of our Constitutional authority, *see SWANCC,* 531 U.S. at 172, as well as protecting the States' traditional authority over their waters and land use, and the right of the public to clear limits to agency authority.

The proposed rule's specific tributary and adjacent wetlands definitions would eliminate the need for the case-specific significant nexus test that was required for many features after Justice Kennedy's concurring opinion in *Rapanos* and according to the agencies' *Rapanos* Guidance. The categorical treatment of all tributaries and adjacent wetlands, as defined by this proposal, will provide clarity to the regulated public regarding the jurisdictional status of such features and ease the administrative burden the agencies face in conducting a case-specific significant nexus analysis to complete many jurisdictional determinations under previous regulations and guidance.

This proposal would also establish greater clarity with respect to the scope of CWA jurisdiction than the 2015 Rule. The Step 1 SNPRM described the widespread confusion regarding the reach of the 2015 Rule. Filings in the Sixth Circuit demonstrate that petitioners representing the States in that case view the 2015 Rule as extending ''jurisdiction to virtually every potentially wet area of the country.'' Opening Brief of State Petitioners at 15, 61, *In re EPA,* No. 15–3751 (6th Cir. Nov. 1, 2016). In contrast, petitioners representing environmental organizations viewed the 2015 Rule as violating the CWA by failing to cover certain waters. Brief of Conservation Groups at 11, *In re EPA,* No. 15–3751 (6th Cir. Nov. 1, 2016). In addition to the differing interpretations of stakeholders, the litigation itself could lead to further uncertainty. A successful challenge to the 2015 Rule could result in a court order vacating the rule in all or part of the country, potentially contributing to the existing patchwork of legal regimes in effect in different parts of the country. This proposed definition of ''waters of the United States'' would establish bright line jurisdictional boundaries that are intended to be easily comprehensible and implementable by the regulated community, and would avoid the potentially extremely complex jurisdictional landscape that could result from litigation over the 2015 Rule.

The agencies believe that the proposed rule would also be clearer than both the substantive content of the 1986 Rule and the way it has been implemented as a result of litigation. For the reasons discussed in the Step 1 proposal and SNPRM, the 1986 Rule, as interpreted by the Supreme Court and implemented through agency guidance, is preferable to the 2015 Rule. However, a clear, comprehensive regulation that encompasses the Supreme Court's interpretations and agency guidance is preferable to the 1986 Rule. The language of the original 1986 Rule leaves substantially more room for discretion and case-by-case variation than this proposal, particularly paragraph (a)(3) in the 1986 regulation, which claims jurisdiction over waters that are used by interstate or foreign travelers for recreational or other purposes, with no reference to navigable waters. Following the Supreme Court's opinions on the definition of ''waters of the United States,'' particularly

[34] In the 2015 Rule, the agencies acknowledged that science cannot dictate where to draw the line of federal jurisdiction. *See, e.g.,* 80 FR 37060. Notwithstanding that qualifier, the agencies relied on the Connectivity Report extensively in establishing the 2015 Rule's definition of ''waters of the United States.''

SWANCC and *Rapanos,* the 1986 Rule cannot be implemented as promulgated, but rather it must be implemented taking into account the Court's holdings and agency guidance interpreting those cases. In the decade since the *Rapanos* decision, the agencies and the public have become familiar with this multi-layered interpretive approach, which is the reason that the agencies have proposed maintaining this regime during the process of developing and considering public comments on this proposal. Yet a codified definition of ''waters of the United States'' that incorporates Supreme Court caselaw and guidance, and is clear as to the scope of jurisdictional waters, certainly provides greater regulatory predictability than the 1986 regulations, as interpreted by the Supreme Court and implemented through agency guidance.

This proposal more appropriately reflects the scope of the agencies' authority under the statute, the Constitution, the vital role of the States and Tribes in managing their land and water resources, and the need of the public for predictable, easily implementable regulations.

J. Placement of the Definition of Waters of the United States in the Code of Federal Regulations

Consistent with existing placement of the definition of ''waters of the United States'' in the Code of Federal Regulations, the agencies propose to locate the proposed definition of ''waters of the United States'' at 33 CFR 328.3, 40 CFR 110.1, 112.2, 116.3, 117.1, 122.2, 230.3, 232.2, 300.5, 401.11, and Appendix E to 40 CFR part 300. Alternatively, the agencies seek comment on whether the definition should be codified in just two places in the Code of Federal Regulations for the sake of simplicity, rather than in the eleven locations in which it currently appears. Following this alternate approach, the agencies would retain one definition in Title 33 of the Code of Federal Regulations, which implements the Corps' statutory authority, and one in Title 40, which generally implements EPA's statutory authority. The agencies are not aware of any implications that this alternate approach might have on program implementation aside from making references to the definition less confusing. The agencies solicit comment on any potential impacts this alternate placement approach could have on program implementation.

IV. State, Tribal and Federal Agency Datasets of ''Waters of the United States''

During the extensive pre-proposal outreach to the general public and focused engagement with States and Tribes, the agencies heard from a number of States about their familiarity with waters within their borders and their expertise in aquatic resource mapping. As co-implementers of CWA programs, they also emphasized the potential benefit of greater State and tribal involvement in jurisdictional determinations. Several States suggested the agencies consider their knowledge and increase the role of States and Tribes in identifying those waters that are ''waters of the United States.'' Stakeholders also indicated that maps could increase certainty and transparency regarding the data and methods used to determine which waters are jurisdictional and which waters are not.

In response, the agencies are interested in advancing the development of state-of-the-art geospatial data tools through Federal, State and tribal partnerships to provide an enhanced, publicly-accessible platform for critical CWA information, such as the location of federally jurisdictional waters, the applicability of State and tribal water quality standards, permitted facility locations, impaired waters, and other important features.

Such mapped features would make it easier for agency field staff, the general public, property owners, permit-holders and others to understand the relationship between familiar geographical features and the overlay of CWA jurisdictional waters. For Federal, State and tribal agencies, such geospatial data sets could improve the administration of CWA programs and attainment of water quality goals. Geospatial datasets and resulting future maps that indicate which waters are likely subject to federal jurisdiction could allow members of the regulated community to more easily and quickly ascertain whether they may want to contact a government agency regarding the potential need for a CWA permit. These datasets, when fully developed, would promote greater regulatory certainty and relieve some of the regulatory burden associated with determining the need for a permit and play an important part in helping to attain the goals of the CWA. They could also eventually be used to identify in one layered geospatial map water quality standards, total maximum daily loads, water quality monitoring data, and other beneficial information.

The agencies are seeking public input on possible approaches to developing or utilizing existing aquatic resource mapping, remote sensing technology, or satellite data in order to facilitate the implementation of this proposed definition of ''waters of the United States.'' Specifically, the agencies are interested in suggestions for how to create a regulatory framework that would authorize interested States, Tribes, and Federal agencies to develop for the agencies' approval geospatial datasets representing ''waters of the United States,'' as well as waters excluded from the definition and ''waters of the State'' or ''waters of the Tribe'' within their respective borders.

The agencies anticipate that such geospatial dataset development would be optional and not a requirement. The agencies are not proposing such a framework today because they would like to engage more fully in discussions with States, Tribes, other Federal agencies, and other technical experts before developing a proposal. The agencies anticipate a possible future rulemaking that could propose a specific approach that would be informed by public comments and suggestions on this notice.

State and tribal geospatial datasets would be unrelated to the ability of States or Tribes to establish their own jurisdiction over waters based on State or tribal law that may be broader than the CWA. They would also be unrelated to the subset of waters for which a State or Tribe could assume permitting responsibility for under the CWA, such as section 402 and section 404 permitting. In a separate rulemaking, the EPA intends to clarify the waters for which a State or Tribe could assume responsibility under section 404(g).

Developing geospatial datasets of ''waters of the United States'' may raise a number of technical and process challenges and questions. This is why the agencies are soliciting public input on the feasibility of creating a geospatial dataset of jurisdictional waters to help inform the agencies' considerations rather than proposing a specific approach today. Below is a discussion of some of the technical and process considerations the agencies have anticipated. The public is encouraged to comment on these and other challenges and questions that might arise from geospatial datasets of CWA jurisdiction.

Dataset development would likely be a longer-term activity involving collaboration among technical geospatial experts from Federal, State, tribal governments, and involving other

key stakeholders, such as consensus standards organizations, the private sector, and academia. The agencies are aware that other entities, including, but not limited to, the Advisory Committee on Water Information, which reports to the Department of the Interior; the National Hydrography Dataset program of the U.S. Geological Survey; the National Wetlands Inventory program of the U.S. Fish and Wildlife Service; the Risk Mapping, Assessment, and Planning program of the Federal Emergency Management Agency; the National Wetland Team of the Natural Resources Conservation Service; and others, possess geospatial data and expertise in matters of geospatial identification of water features. In addition, the agencies would anticipate drawing on the expertise and infrastructure of the standing Federal Geographic Data Committee (FGDC) for convening experts, resolving technical issues and vetting developments and innovative ideas.

In the realm of geospatial data, the Federal government has sought to establish ''standards'' for geospatial data through the FGDC. The agencies expect that a final rule defining the scope of ''waters of the United States'' would be the policy with which any mapping effort would need to be consistent. The primary question the methods and data specifications would address is how to remotely identify the measurable hydrologic features that comprise the ''waters of the United States'' in order to create these geospatial datasets. The agencies recognize the need to provide specifications for the data in order to ensure that ''waters of the United States'' datasets are consistent nationwide. These specifications would include the specific structure and content details for the dataset itself, such as the acceptable geographic or projected coordinate system(s), identification of all mandatory (and any optional) data fields to be populated, minimum FGDC-compliant metadata attributes, and acceptable file format(s).

One approach the agencies could take is a future rulemaking following collaboration with technical experts as described above and prior to the States, Tribes, or Federal agencies creating such datasets. States, Tribes, and Federal agencies could then submit method(s) for creating a dataset which would be consistent with the revised definition of ''waters of the United States.'' The EPA and Corps would then review each proposed method in order to determine whether the method results in a complete and accurate representation of ''waters of the United States'' within a dataset extent. Under this approach, any methods determined to result in complete and accurate datasets would be published in the **Federal Register** or through a public website, along with a statement of the geographic area(s) where use of each method is appropriate and approved for use. This approach would likely account for the variation in landscapes and data availability across the nation, would leverage the knowledge the Federal land management agencies, States and Tribes possess regarding their own geography, and could be completed sooner than if the agencies were to develop applicable methods first.

The agencies solicit comment on this proposed approach and suggestions for alternative approaches that the agencies might consider as part of a future rulemaking. For example, how would the methods and datasets, once approved by the agencies, be most effectively communicated to the public? One option might be that, as part of the approval process, States, Tribes and Federal agencies undertake a public notice and comment process for proposed datasets prior to submitting the jurisdictional geospatial dataset to the EPA and the Corps for approval. With respect to review by EPA and the Corps, should there should be a requirement that the agencies approve or disapprove the dataset within a set number of days? As datasets would need to be updated periodically, the agencies also request comment on the appropriate process for updating datasets and a reasonable frequency for doing so such that the datasets effectively represent current conditions.

The goal would be to develop datasets that graphically represent ''waters of the United States'' or portions thereof, to which agencies' staff, the potentially regulated community, and others could refer to see waters that are presumptively jurisdictional under the CWA. No such dataset currently exists. The agencies anticipate that, for such a presumption, a geospatial dataset would need to be developed using a method approved by the EPA and the Corps, be within the specifications for the dataset, and be approved by the agencies to be of sufficient quality. Such a dataset would be subject to potential site-specific refinement in individual jurisdictional determinations to address, for example, the lateral extent of jurisdiction. This approval or disapproval could be subject to judicial review. Following approval, the agencies anticipate that individual waters could be added to or removed from a dataset based on site-specific jurisdictional determinations. Presently, jurisdictional determinations by the Corps are valid for five years, and the agencies anticipate these approved geospatial datasets would need to be updated at a reasonable frequency to ensure they reflect current conditions.

As part of such an effort, the agencies would make public approved methods, specifications and the geospatial datasets at a centralized location. The agencies therefore solicit comment on appropriate features and attributes of the website that would publish this information, as well as any privacy considerations the agencies should understand. In order to provide a useful tool to the public, the agencies anticipate that each approved geospatial dataset would need to be viewable online via a web-based map, on a federally-maintained website. The EPA currently maintains a website at *https://watersgeo.epa.gov/cwa/CWA-JDs/* that presents information on approved jurisdictional determinations made by the Corps and the EPA under the CWA since August 28, 2015. The agencies envision that in the future, this site or another site could provide access to a web-based map.

Because the EPA and the Corps would review the methods used to generate the datasets for consistency with the definition of ''waters of the United States'' and an acceptable level of completeness and accuracy, the resulting State, tribal, and Federal agency datasets would not inappropriately delegate the authority to determine federal jurisdiction under the CWA. Under this proposal, the agencies would retain their current final authority regarding the scope of ''waters of the United States.''

The agencies are interested in learning about experiences States, Tribes, and other Federal agencies have had with mapping aquatic resources and using this information for program implementation. What technical and financial resources were required by their past mapping efforts, and what challenges were faced in mapping various types of aquatic resources? Does past experience recommend an incremental approach, such that States, Tribes, and other Federal agencies start the process with more manageable first steps such as focusing on tributaries rather than all types of waters of the United States, or by focusing on a portion rather than or all of the watersheds or other defined areas within their borders? Under such an incremental approach, the States, Tribes, and other Federal agencies could establish datasets for additional waters over time. However, an incremental approach would require recognition that any approved dataset would not capture

all waterbody types and therefore the agencies would identify any limitations on the web map viewer to provide clarity. As the agencies engage with States, Tribes, other Federal agencies, and the public in a discussion of possible aquatic resource datasets, the agencies would like to better understand the level of interest in developing geospatial datasets of jurisdictional waters should such an option be available.

V. Overview of Supporting Analyses

The agencies conducted a series of analyses to better understand the potential effects across CWA programs associated with a revised definition of ''waters of the United States.'' The analyses are contained and described more fully in the *Resource and Programmatic Assessment for the Proposed Revised Definition of ''Waters of the United States''* and in the *Economic Analysis for the Proposed Revised Definition of ''Waters of the United States.''* Copies of these documents are available in the docket for this action.

As a preliminary matter, the agencies note that they are not aware of any map or dataset that accurately or with any precision portrays the scope of CWA jurisdiction at any point in the history of this complex regulatory program. Establishing a mapped baseline from which to assess regulatory changes is likewise impracticable at this time. As summarized in Section II, for example, what was understood about the potential scope of CWA jurisdiction changed in the 1970s, in the mid-80s with *Riverside Bayview* and regulatory updates, in 2001 with the landmark *SWANCC* decision, in 2006 with the fractured *Rapanos* decision, in 2007 and 2008 with the agencies' attempts to discern the meaning of the *Rapanos* decision through guidance and throughout the ensuing decade of litigation that tested those interpretations, in 2015 with a major rulemaking to redefine the operative phrase ''waters of the United States,'' and throughout the complex litigation following that rulemaking. As the Chief Justice of the Supreme Court succinctly observed in 2016, ''[i]t is often difficult to determine whether a particular piece of property contains waters of the United States . . . .'' *Army Corps of Eng'rs* v. *Hawkes Co.,* 136 S. Ct. at 1812. Given this history, the agencies are not aware of any means to quantify changes in CWA jurisdiction with any precision that may or may not occur as a result of this proposed rule. The agencies acknowledge that they faced criticism from many commenters regarding the accuracy and assumptions they made when attempting to estimate changes in jurisdiction for the economic analysis associated with the 2015 Rule.

Within this complex framework, the agencies have attempted to look at available data to analyze the potential effects of this proposed definition across CWA programs, recognizing that there will be limitations with any approach. In their analyses, the agencies describe how the proposed regulation compares to the baseline of the 2015 Rule and an alternate baseline of pre-2015 practice (*i.e.,* the pre-2015 regulations as interpreted by the Supreme Court and implemented through agency guidance), both of which represent current practice in some areas of the country. The documents outline the agencies' assessment of the potential effects of the proposed definition on aquatic resources across the country and on CWA programs, and the Resource and Programmatic Assessment provides further information on programs addressing aquatic resource quality under other federal statutes. The agencies also researched current State laws and programs to better understand how States already regulate waters within their borders. This information was utilized throughout the agencies' analyses; the State descriptions may be found in Appendix B of the Resource and Programmatic Assessment.

The agencies also identified relevant datasets and technical limitations for analyses of potential changes in jurisdiction for different types of aquatic resources. For the analyses, the agencies examined data records in the Corps' Operation and Maintenance Business Information Link, Regulatory Module (ORM2) database that documents Corps decisions regarding the jurisdictional status of various aquatic resource types (*i.e.,* jurisdictional determinations). The aquatic resource types used in ORM2 generally track the *Rapanos* Guidance (*e.g.,* relatively permanent waters) but do not directly correlate with the terms used in the proposed rule, with limited exceptions. The agencies attempted to use publicly-available data from national datasets (*e.g.,* the National Hydrography Dataset (NHD) at High Resolution and the National Wetlands Inventory (NWI)) to assess the potential extent of types of waters whose jurisdictional status might change as a result of the proposed rule. While the NHD and NWI datasets are widely used and recognized as the most comprehensive national datasets that generally map waters and wetlands, they are neither designed nor able to portray jurisdictional waters under the CWA. Therefore, they have technical limitations that would affect the agencies' analyses, as more fully described in the Resource and Programmatic Assessment and Economic Analysis for this proposal. Because of these limitations and the uncertainties in the way in which States or Tribes might respond following a change in the definition of ''waters of the United States,'' many of the potential effects of the proposed rule are discussed qualitatively, and some are discussed quantitatively where possible.

For the Economic Analysis, the agencies applied a two-stage analysis to make the best use of limited local and national level water resources information in their effort to assess the potential implications of this proposed rule. The agencies believe that the outputs of this two-stage analysis are the best way to illustrate the potential overall impact of the proposed rule against the baseline of the 2015 Rule being in effect nationwide (*i.e.,* the sum effect of both stages) and of the 2015 Rule not being in effect (*i.e.,* second stage only). The agencies acknowledge that determining what may happen following the issuance of a new regulation requires making various assumptions, which are discussed throughout the analyses.

The first stage of the Economic Analysis (hereinafter Stage 1) assesses the potential impacts of moving from the 2015 Rule to the pre-2015 practice baseline (*i.e.,* repealing the 2015 Rule and recodifying the prior regulations). For the Stage 1 analysis, the agencies used the original 2015 Rule economic analysis as a starting point and developed a quantitative assessment limited to Stage 1. However, several significant changes to the 2015 Rule analysis have been made in the Stage 1 analysis to account for existing State laws and programs that regulate water and potential State governance responses, as well as to account for better information used to assess the potential benefits and costs of the Stage 1 effects. The agencies developed several scenarios using different assumptions about potential State regulation of waters to provide a range of costs and benefits. Under the scenario that assumes the fewest number of States regulating newly non-jurisdictional waters, the agencies estimate the proposed rule would produce annual avoided costs ranging between $98 and $164 million and annual forgone benefits ranging between $33 to $38 million. When assuming the greatest number of States are already regulating newly non-jurisdictional waters, the agencies estimate there would be avoided annual costs ranging

from $9 to $15 million and annual forgone benefits are estimated to be approximately $3 million. Under the scenario that assumes no States will regulate newly non-jurisdictional waters, an outcome the agencies believe would be unlikely, the agencies estimate the proposed rule would produce annual avoided costs ranging from $165 and $343 million and annual forgone benefits ranging from $93 to $104 million.

The second stage of the economic analysis (hereinafter Stage 2) consists of a series of qualitative analyses and three detailed case studies of moving from the pre-2015 practice to the proposal. The qualitative analysis is intended to provide information on the likely direction of the potential effects on CWA regulatory programs. In addition, the agencies conducted case studies in three major watersheds (Ohio River basin, Lower Missouri River basin, and Rio Grande River basin) to provide information for a quantitative assessment of the potential effects of the proposal. The case studies considered potential ecological effects, and their accompanying potential economic effects for programs implemented pursuant to sections 311, 402, and 404 of the CWA. Because of data limitations, the agencies were only able to provide Stage 2 national-level estimates of the potential avoided permit and mitigation costs and forgone benefits for the CWA 404 program. Using the same methodologies employed in the case studies and using a meta function benefits transfer to value forgone wetland benefits, the national annual avoided costs of the CWA 404 program are estimated to range from $28 million to $266 million and national annual forgone benefits from the CWA 404 program are estimated to range from $7 million to $47 million. When considering the full range of scenarios regarding potential State regulation of waters no longer considered jurisdictional under the proposal, the estimated national annual avoided costs of the CWA 404 program range from $28 million to $497 million and national annual forgone benefits range from $7 million to $136 million.

The agencies solicit comment on all aspects of the analyses performed, including the assumptions made and information used, and request that commenters provide any data that may assist the agencies in evaluating and characterizing potential effects of the proposed change of the definition of ''waters of the United States.'' For example, the agencies request comment on the suitability of the NHD and NWI datasets as tools for performing comparative analyses of revisions to the definition of ''waters of the United States,'' the datasets used (including how they were used) for purposes of the case studies and the national estimates of costs and benefits for CWA 404 program, and the appropriateness of the stated preference studies used to value household willingness to pay for changes in wetland acreage. The agencies also solicit comment on the utility of using focused case studies to help inform the agencies' analysis of a nationwide rule given the lack of comprehensive national datasets representing jurisdictional waters.

VI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *http://www2.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 13771: Reducing Regulation and Controlling Regulatory Costs

Pursuant to Executive Order 13771 (82 FR 9339, February 3, 2017), this proposed rule is expected to be a deregulatory action.

B. Executive Order 12866: Regulatory Planning and Review; Executive Order 13563: Improving Regulation and Regulatory Review

This action is an ''economically significant regulatory action'' that was submitted to the Office of Management and Budget (OMB) for review. Any changes made in response to OMB recommendations have been documented in the docket for this action. In addition, the agencies prepared an analysis of the potential costs and benefits associated with this action. This analysis is contained in *Economic Analysis for the Proposed Revised Definition of ''Waters of the United States,''* which is available in the docket and briefly summarized in Section V. Additional analysis can be found in the *Resource and Programmatic Assessment for the Proposed Revised Definition of ''Waters of the United States''* which is also available in the docket.

C. Paperwork Reduction Act

This action does not impose any new information collection burden under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control numbers 2050–0021 and 2050–0135 for the CWA section 311 program and 2040–0004 for the CWA section 402 program. For the CWA section 404 program, the current OMB approval number for information requirements is maintained by the Corps (OMB approval number 0710–0003). However, there are no new approval or application processes required as a result of this rulemaking that necessitate a new Information Collection Request (ICR).

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this proposed rule on small entities, ''small entity'' is defined as: (1) A small business that is a small industrial entity as defined in the U.S. Small Business Administration's size standards (*see* 13 CFR 121.201); (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

The purpose of the RFA is ''to fit regulatory and informational requirements to the scale of the businesses, organizations and governmental jurisdictions subject to the regulation.'' 5 U.S.C. 601. Small entities subject to this proposed rule are largely those entities whose activities are directly covered by the CWA sections 402, 404, and 311 programs. The proposed rule is expected to result in fewer entities subject to these programs, and a reduced regulatory burden for many of the entities that will still be subject to these programs. As a result, small entities subject to these regulatory programs are unlikely to suffer adverse impacts as a result of regulatory compliance.

As addressed in the Economic Analysis for the proposed rule, narrowing the scope of CWA regulatory jurisdiction over waters may result in a reduction in the ecosystem services provided by some waters, and as a result, some entities may be adversely impacted. Some business sectors that depend on habitat, such as those catering to hunters or anglers, or that require water treatment to meet production needs, could experience a

greater impact relative to other sectors. These changes in ecosystem services are likely to be small, infrequent, and dispersed over wide geographic areas, thereby limiting the significance of these impacts on these business sectors. In addition, States and Tribes may already address waters potentially affected by a revised definition, thereby reducing forgone benefits.

The sector likely to be most impacted by the proposed rule are mitigation banks, and companies that provide restoration services. Because fewer waters would be subject to the CWA under the proposed rule than are subject to regulation under the 2015 Rule or pre-2015 practice, there may be a reduction in demand for mitigation and restoration services under the section 404 permitting program. Assessing impacts to this sector is problematic, because this sector lacks a SBA small business definition, and many of the businesses that fall within this sector are also classified under various other NAICs categories. Furthermore, impacts to this sector would not be the direct result of these businesses complying with the proposed rule, rather they would be the indirect result of other entities no longer being required to mitigate for discharges of dredged or fill material into waters that would no longer be jurisdictional under the proposed rule. In addition, potential impacts would be lessened when accounting for State and tribal dredged and fill programs that would necessitate the purchase of mitigation credits. For a more detailed discussion see the RFA section of the Economic Analysis for the proposed rule.

The agencies certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. This is a deregulatory action, and the burden on all entities affected by this proposed rule, including small entities, is reduced compared to the 2015 Rule and pre-2015 practice. The agencies have therefore concluded that this action will relieve regulatory burden to small entities.

E. Unfunded Mandates Reform Act

This proposed rule does not contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The proposed definition of ''waters of the United States'' applies broadly to CWA programs. The proposed action imposes no enforceable duty on any state, local or tribal governments or the private sector, and does not contain regulatory requirements that significantly or uniquely affect small governments.

F. Executive Order 13132: Federalism

Consulting with state and local government officials, or their representative national organizations, is an important step in the process prior to proposing regulations that may have implications for State and local governments under the terms of Executive Order 13132 (64 FR 43255, August 10, 1999). The agencies undertook a 60-day Federalism consultation early in the process and then conducted additional outreach to States for this proposed rulemaking to ensure that the agencies could hear the perspectives on how the agencies might revise the definition of ''waters of the United States'' from our State co-regulators. All letters received by the agencies during Federalism consultation may be found on EPA's website at *https://www.epa.gov/wotus-rule/federalism-consultation.*

State and local governments were consulted at the outset of rule development starting on April 19, 2017. The agencies held nineteen Federalism meetings between April 19 and June 16, 2017. Seventeen intergovernmental associations, including nine of the ten organizations identified in EPA's 2008 E.O. 13132 Guidance, attended the initial Federalism consultation meeting, as well as several associations representing State and local governments. Organizations in attendance included: The National Governors Association, the National League of Cities, the National Association of Counties, the U.S. Conference of Mayors, the Council of State Governments, the National Conference of State Legislatures, the County Executives of America, the National Association of Towns and Townships, the Environmental Council of the States, the Western Governors Association, the National Association of Clean Water Agencies, the Association of Clean Water Administrators, the National Association of State Departments of Agriculture, the Association of State Wetlands Managers, the Association of State Floodplain Managers, the National Water Resources Association, the State/Local Legal Center, and several members of EPA's Local Government Advisory Committee (LGAC).

The LGAC met 10 times during this period to address the charge given to its members by the EPA Administrator on a revised rule and completed a report addressing the questions outlined in their charge. The July 14, 2017, final report can be obtained here: *https://www.epa.gov/sites/production/files/2017-07/documents/lgac-final-wotusreport-july2017.pdf.*

The agencies held two additional webinars, the first for Tribes, States, and local governments on December 12, 2017; and, one for States on February 20, 2018. In addition, one in-person meeting to seek technical input on the proposed rule was held with a small group of nine states (Arizona, Arkansas, Florida, Iowa, Maryland, Minnesota, Oregon, Pennsylvania, and Wyoming) on March 8 and 9, 2018.

These meetings and the letters provided by representatives provide a wide and diverse range of interests, positions, comments, and recommendations to the agencies. The agencies have prepared a report summarizing their consultation and additional outreach to state and local governments and the results of this outreach. A copy of the draft report is available in the docket (Docket Id. No. EPA–HQ–OW–2018–0149) for this proposed rule.

Under the technical requirements of Executive Order 13132, the agencies have determined that this proposed rule may not have federalism implications but believe that the requirements of the Executive Order have been satisfied in any event.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

The EPA consulted with tribal officials under the *EPA Policy on Consultation and Coordination with Indian Tribes* early in the process of developing this action to permit them to have meaningful and timely input into its development. In the course of this consultation, the Department of the Army participated in aspects of the process.

EPA initiated a tribal consultation and coordination process before proposing this rule by sending a ''Notification of Consultation and Coordination'' letter on April 20, 2017, to all of the 567 Tribes federally recognized at that time. The letter invited tribal leaders and designated consultation representatives to participate in the tribal consultation and coordination process. The agencies held two identical webinars concerning this matter for tribal representatives on

April 27 and May 18, 2017. Tribes and tribal organizations sent 43 pre-proposal comment letters to the agencies as part of the consultation process. The agencies met with nine Tribes at a staff-level and with three Tribes at a leader-to-leader level, and additional meetings with Tribes are to be scheduled. The agencies continued engagement with Tribes after the end of the formal consultation, including at national update webinars on December 12, 2017 and February 20, 2018, and an in-person Tribal Co-Regulators Workshop on March 6–7, 2018. The agencies have prepared a report summarizing the consultation and further engagement with tribal nations. This report, *Summary Report of Tribal Consultation and Engagement for the Proposed Rule: Definition of ''Waters of the United States''* (Docket Id. No. EPA–HQ–OW–2018–0149), is available in the docket for this proposed rule.

This action may have tribal implications. However, it will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law.

H. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because the environmental health or safety risks addressed by this action do not present a disproportionate risk to children.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

This action is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not likely to have a significant adverse effect on the supply, distribution or use of energy.

J. National Technology Transfer and Advancement Act

This proposed rule does not involve technical standards. The agencies recognize, however, that if they pursue a separate rulemaking to establish a process for approving methodologies and geospatial datasets as discussed in Section III.H, there would be technical standards involved.

K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

This action is not subject to Executive Order 12898 (59 FR 7629, February 11, 1994) because there is no significant evidence of disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples, as specified in Executive Order 12898.

List of Subjects

33 CFR Part 328

Environmental protection, Administrative practice and procedure, Navigation (water), Water pollution control, Waterways.

40 CFR Part 110

Environmental protection, Oil pollution, Reporting and recordkeeping requirements.

40 CFR Part 112

Environmental protection, Oil pollution, Penalties, Reporting and recordkeeping requirements.

40 CFR Part 116

Environmental protection, Hazardous substances, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 117

Environmental protection, Hazardous substances, Penalties, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 122

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous substances, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 230

Environmental protection, Water pollution control.

40 CFR Part 232

Environmental protection, Intergovernmental relations, Water pollution control.

40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Occupational safety and health, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

40 CFR Part 302

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

40 CFR Part 401

Environmental protection, Waste treatment and disposal, Water pollution control.

Dated: December 11, 2018.

Andrew R. Wheeler,

Acting Administrator, Environmental Protection Agency.

Dated: December 11, 2018.

R.D. James,

Assistant Secretary for the Army (Civil Works), Department of the Army.

Title 33—Navigation and Navigable Waters

For the reasons set forth in the preamble, the Corps of Engineers proposes to amend 33 CFR part 328 as follows:

PART 328—DEFINITION OF WATERS OF THE UNITED STATES

■ 1. The authority citation for part 328 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

■ 2. Section 328.3 is revised to read as follows:

§ 328.3 Definitions.

For the purpose of this regulation these terms are defined as follows:

(a) For purposes of the Clean Water Act, 33 U.S.C. 1251 *et seq.* and its implementing regulations, subject to the exclusions in paragraph (b) of this section, the term ''waters of the United States'' means:

(1) Waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including the territorial seas and waters which are subject to the ebb and flow of the tide;

(2) Tributaries of waters identified in paragraph (a)(1) of this section;

(3) Ditches that satisfy any of the conditions identified in paragraph (a)(1) of this section, ditches constructed in a tributary or that relocate or alter a tributary as long as those ditches also satisfy the conditions of the tributary definition, and ditches constructed in an adjacent wetland as long as those ditches also satisfy the conditions of the tributary definition;

(4) Lakes and ponds that satisfy any of the conditions identified in paragraph (a)(1) of this section, lakes and ponds that contribute perennial or intermittent flow to a water identified in paragraph (a)(1) in a typical year either directly or indirectly through a water(s) identified in paragraphs (a)(2) through (6) of this

section or through water features identified in paragraph (b) of this section so long as those water features convey perennial or intermittent flow downstream, and lakes and ponds that are flooded by a water identified in paragraphs (a)(1) through (5) of this section in a typical year;

(5) Impoundments of waters identified in paragraphs (a)(1) through (4) and (6) of this section; and

(6) Adjacent wetlands to waters identified in paragraphs (a)(1) through (5) of this section.

(b) The following are not ''waters of the United States'':

(1) Waters or water features that are not identified in paragraphs (a)(1) through (6) of this section;

(2) Groundwater, including groundwater drained through subsurface drainage systems;

(3) Ephemeral features and diffuse stormwater run-off, including directional sheet flow over upland;

(4) Ditches that are not identified in paragraph (a)(3) of this section;

(5) Prior converted cropland;

(6) Artificially irrigated areas, including fields flooded for rice or cranberry growing, that would revert to upland should application of irrigation water to that area cease;

(7) Artificial lakes and ponds constructed in upland (including water storage reservoirs, farm and stock watering ponds, and log cleaning ponds) which are not identified in paragraph (a)(4) or (5) of this section;

(8) Water-filled depressions created in upland incidental to mining or construction activity, and pits excavated in upland for the purpose of obtaining fill, sand, or gravel;

(9) Stormwater control features excavated or constructed in upland to convey, treat, infiltrate or store stormwater run-off;

(10) Wastewater recycling structures constructed in upland, such as detention, retention and infiltration basins and ponds, and groundwater recharge basins; and

(11) Waste treatment systems.

(c) Definitions: In this section, the following definitions apply:

(1) *Adjacent wetlands.* The term *adjacent wetlands* means wetlands that abut or have a direct hydrologic surface connection to a water identified in paragraphs (a)(1) through (5) of this section in a typical year. Abut means to touch at least at one point or side of a water identified in paragraphs (a)(1) through (5) of this section. A direct hydrologic surface connection occurs as a result of inundation from a paragraph (a)(1) through (5) water to a wetland or via perennial or intermittent flow between a wetland and a paragraph (a)(1) through (5) water. Wetlands physically separated from a paragraph (a)(1) through (5) water by upland or by dikes, barriers, or similar structures and also lacking a direct hydrologic surface connection to such waters are not adjacent.

(2) *Ditch.* The term *ditch* means an artificial channel used to convey water.

(3) *Ephemeral.* The term *ephemeral* means surface water flowing or pooling only in direct response to precipitation (*e.g.,* rain or snow fall).

(4) *High tide line.* The term *high tide line* means the line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds, such as those accompanying a hurricane or other intense storm.

(5) *Intermittent.* The term *intermittent* means surface water flowing continuously during certain times of a typical year and more than in direct response to precipitation (*e.g.,* seasonally when the groundwater table is elevated or when snowpack melts).

(6) *Ordinary high water mark.* The term *ordinary high water mark* means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

(7) *Perennial.* The term *perennial* means surface water flowing continuously year-round during a typical year.

(8) *Prior converted cropland.* The term *prior converted cropland* means any area that, prior to December 23, 1985, was drained or otherwise manipulated for the purpose, or having the effect, of making production of an agricultural product possible. EPA and the Corps will recognize designations of prior converted cropland made by the Secretary of Agriculture. An area is no longer considered *prior converted cropland* for purposes of the Clean Water Act when the area is abandoned and has reverted to wetland, as defined in paragraph (c)(15) of this section. Abandonment occurs when prior converted cropland is not used for, or in support of, agricultural purposes at least once in the immediately preceding five years. For the purposes of the Clean Water Act, the EPA Administrator shall have the final authority to determine whether prior converted cropland has been abandoned.

(9) *Snowpack.* The term *snowpack* means layers of snow that accumulate over extended periods of time in certain geographic regions and high altitudes (*e.g.,* in northern climes and mountainous regions).

(10) *Tidal waters* and *waters subject to the ebb and flow of the tide.* The terms *tidal waters* and *waters subject to the ebb and flow of the tide* mean those waters that rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters and waters subject to the ebb and flow of the tide end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by hydrologic, wind, or other effects.

(11) *Tributary.* The term *tributary* means a river, stream, or similar naturally occurring surface water channel that contributes perennial or intermittent flow to a water identified in paragraph (a)(1) of this section in a typical year either directly or indirectly through a water(s) identified in paragraphs (a)(2) through (6) of this section or through water features identified in paragraph (b) of this section so long as those water features convey perennial or intermittent flow downstream. A tributary does not lose its status as a tributary if it flows through a culvert, dam, or other similar artificial break or through a debris pile, boulder field, or similar natural break so long as the artificial or natural break conveys perennial or intermittent flow to a tributary or other jurisdictional water at the downstream end of the break. The alteration or relocation of a tributary does not modify its status as a tributary as long as it continues to satisfy the elements of this definition.

(12) *Typical year.* The term *typical year* means within the normal range of precipitation over a rolling thirty-year period for a particular geographic area.

(13) *Upland.* The term *upland* means any land area that under normal circumstances does not satisfy all three wetland delineation criteria (*i.e.,* hydrology, hydrophytic vegetation,

hydric soils) identified in paragraph (c)(15) of this section, and does not lie below the ordinary high water mark or the high tide line of a water identified in paragraph (a)(1) through (6) of this section. Waters identified in paragraphs (a)(1) through (6) of this section are not upland.

(14) *Waste treatment system.* The term *waste treatment system* includes all components, including lagoons and treatment ponds (such as settling or cooling ponds), designed to convey or retain, concentrate, settle, reduce, or remove pollutants, either actively or passively, from wastewater prior to discharge (or eliminating any such discharge).

(15) *Wetlands.* The term *wetlands* means areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

Title 40—Protection of Environment

For reasons set out in the preamble, the EPA proposes to amend 40 CFR part 110 as follows:

PART 110—DISCHARGE OF OIL

■ 3. The authority citation for part 110 continues to read as follows: 33 U.S.C.

Authority: 1251 *et seq.,* 33 U.S.C. 1321(b)(3) and (b)(4) and 1361(a); E.O. 11735, 38 FR 21243, 3 CFR parts 1971–1975 Comp., p. 793.

■ 4. Section 110.1 is amended by revising the definition of ''navigable waters'' to read as follows:

§ 110.1 Definitions.

* * * * *

Navigable waters means waters of the United States, including the territorial seas.

(1) For purposes of the Clean Water Act, 33 U.S.C. 1251 *et seq.* and its implementing regulations, subject to the exclusions in paragraph (2) of this section, the term ''waters of the United States'' means:

(i) Waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including the territorial seas and waters which are subject to the ebb and flow of the tide;

(ii) Tributaries of waters identified in paragraph (1)(i) of this definition;

(iii) Ditches that satisfy any of the conditions identified in paragraph (1)(i) of this definition, ditches constructed in a tributary or that relocate or alter a tributary as long as those ditches also satisfy the conditions of the tributary definition, and ditches constructed in an adjacent wetland as long as those ditches also satisfy the conditions of the tributary definition;

(iv) Lakes and ponds that satisfy any of the conditions identified in paragraph (1)(i) of this definition, lakes and ponds that contribute perennial or intermittent flow to a water identified in paragraph (1)(i) of this definition in a typical year either directly or indirectly through a water(s) identified in paragraphs (1)(ii) through (vi) of this definition or through water features identified in paragraph (2) of this definition so long as those water features convey perennial or intermittent flow downstream, and lakes and ponds that are flooded by a water identified in paragraphs (1)(i) through (v) of this definition in a typical year;

(v) Impoundments of waters identified in paragraphs (1)(i) through (iv) and (vi) of this definition; and

(vi) Adjacent wetlands to waters identified in paragraphs (1)(i) through (v) of this definition.

(2) The following are not ''waters of the United States'':

(i) Waters or water features that are not identified in paragraphs (1)(i) through (vi) of this definition;

(ii) Groundwater, including groundwater drained through subsurface drainage systems;

(iii) Ephemeral features and diffuse stormwater run-off, including directional sheet flow over upland;

(iv) Ditches that are not identified in paragraph (1)(iii) of this definition;

(v) Prior converted cropland;

(vi) Artificially irrigated areas, including fields flooded for rice or cranberry growing, that would revert to upland should application of irrigation water to that area cease;

(vii) Artificial lakes and ponds constructed in upland (including water storage reservoirs, farm and stock watering ponds, and log cleaning ponds) which are not identified in paragraph (1)(iv) or (v) of this definition;

(viii) Water-filled depressions created in upland incidental to mining or construction activity, and pits excavated in upland for the purpose of obtaining fill, sand, or gravel;

(ix) Stormwater control features excavated or constructed in upland to convey, treat, infiltrate or store stormwater run-off;

(x) Wastewater recycling structures constructed in upland, such as detention, retention and infiltration basins and ponds, and groundwater recharge basins; and

(xi) Waste treatment systems.

(3) In this definition, the following terms apply:

(i) *Adjacent wetlands.* The term *adjacent wetlands* means wetlands that abut or have a direct hydrologic surface connection to a water identified in paragraphs (1)(i) through (v) of this definition in a typical year. Abut means to touch at least at one point or side of a water identified in paragraphs (1)(i) through (v) of this definition. A direct hydrologic surface connection occurs as a result of inundation from a paragraph (1)(i) through (v) water to a wetland or via perennial or intermittent flow between a wetland and a paragraph (1)(i) through (v) water. Wetlands physically separated from a paragraph (1)(i) through (v) water by upland or by dikes, barriers, or similar structures and also lacking a direct hydrologic surface connection to such waters are not adjacent.

(ii) *Ditch.* The term *ditch* means an artificial channel used to convey water.

(iii) *Ephemeral.* The term *ephemeral* means surface water flowing or pooling only in direct response to precipitation (*e.g.,* rain or snow fall).

(iv) *High tide line.* The term *high tide line* means the line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds, such as those accompanying a hurricane or other intense storm.

(v) *Intermittent.* The term *intermittent* means surface water flowing continuously during certain times of a typical year and more than in direct response to precipitation (*e.g.,* seasonally when the groundwater table is elevated or when snowpack melts).

(vi) *Ordinary high water mark.* The term *ordinary high water mark* means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

(vii) *Perennial.* The term *perennial* means surface water flowing continuously year-round during a typical year.

(viii) *Prior converted cropland.* The term *prior converted cropland* means any area that, prior to December 23, 1985, was drained or otherwise manipulated for the purpose, or having the effect, of making production of an agricultural product possible. EPA and the Corps will recognize designations of prior converted cropland made by the Secretary of Agriculture. An area is no longer considered *prior converted cropland* for purposes of the Clean Water Act when the area is abandoned and has reverted to wetland, as defined in paragraph (3)(xv) of this definition. Abandonment occurs when prior converted cropland is not used for, or in support of, agricultural purposes at least once in the immediately preceding five years. For the purposes of the Clean Water Act, the EPA Administrator shall have the final authority to determine whether prior converted cropland has been abandoned.

(ix) *Snowpack.* The term *snowpack* means layers of snow that accumulate over extended periods of time in certain geographic regions and high altitudes (*e.g.,* in northern climes and mountainous regions).

(x) *Tidal waters* and *waters subject to the ebb and flow of the tide.* The terms *tidal waters* and *waters subject to the ebb and flow of the tide* mean those waters that rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters and waters subject to the ebb and flow of the tide end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by hydrologic, wind, or other effects.

(xi) *Tributary.* The term *tributary* means a river, stream, or similar naturally occurring surface water channel that contributes perennial or intermittent flow to a water identified in paragraph (1)(i) of this definition in a typical year either directly or indirectly through a water(s) identified in paragraphs (1)(ii) through (vi) of this definition or through water features identified in paragraph (2) of this definition so long as those water features convey perennial or intermittent flow downstream. A tributary does not lose its status as a tributary if it flows through a culvert, dam, or other similar artificial break or through a debris pile, boulder field, or similar natural break so long as the artificial or natural break conveys perennial or intermittent flow to a tributary or other jurisdictional water at the downstream end of the break. The alteration or relocation of a tributary does not modify its status as a tributary as long as it continues to satisfy the elements of this definition.

(xii) *Typical year.* The term *typical year* means within the normal range of precipitation over a rolling thirty-year period for a particular geographic area.

(xiii) *Upland.* The term *upland* means any land area that under normal circumstances does not satisfy all three wetland delineation criteria (*i.e.,* hydrology, hydrophytic vegetation, hydric soils) identified in paragraph (3)(xv) of this definition, and does not lie below the ordinary high water mark or the high tide line of a water identified in paragraph (1)(i) through (vi) of this definition. Waters identified in paragraphs (1)(i) through (vi) of this definition are not upland.

(xiv) *Waste treatment system.* The term *waste treatment system* includes all components, including lagoons and treatment ponds (such as settling or cooling ponds), designed to convey or retain, concentrate, settle, reduce, or remove pollutants, either actively or passively, from wastewater prior to discharge (or eliminating any such discharge).

(xv) *Wetlands.* The term *wetlands* means areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

* * * * *

PART 112—OIL POLLUTION PREVENTION

■ 5. The authority citation for part 112 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

■ 6. Section 112.2 is amended by revising the definition of ''navigable waters'' to read as follows:

§ 112.2 Definitions.

* * * * *

Navigable waters means waters of the United States, including the territorial seas.

(1) For purposes of the Clean Water Act, 33 U.S.C. 1251 *et seq.* and its implementing regulations, subject to the exclusions in paragraph (2) of this section, the term ''waters of the United States'' means:

(i) Waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including the territorial seas and waters which are subject to the ebb and flow of the tide;

(ii) Tributaries of waters identified in paragraph (1)(i) of this definition;

(iii) Ditches that satisfy any of the conditions identified in paragraph (1)(i) of this definition, ditches constructed in a tributary or that relocate or alter a tributary as long as those ditches also satisfy the conditions of the tributary definition, and ditches constructed in an adjacent wetland as long as those ditches also satisfy the conditions of the tributary definition;

(iv) Lakes and ponds that satisfy any of the conditions identified in paragraph (a)(1) of this definition, lakes and ponds that contribute perennial or intermittent flow to a water identified in paragraph (1)(i) of this section in a typical year either directly or indirectly through a water(s) identified in paragraphs (1)(ii) through (iv) of this definition or through water features identified in paragraph (2) of this definition so long as those water features convey perennial or intermittent flow downstream, and lakes and ponds that are flooded by a water identified in paragraphs (1)(i) through (v) of this definition in a typical year;

(v) Impoundments of waters identified in paragraphs (1)(i) through (iv) and (vi) of this definition; and

(vi) Adjacent wetlands to waters identified in paragraphs (1)(i) through (v) of this definition.

(2) The following are not ''waters of the United States'':

(i) Waters or water features that are not identified in paragraphs (1)(i) through (vi) of this definition;

(ii) Groundwater, including groundwater drained through subsurface drainage systems;

(iii) Ephemeral features and diffuse stormwater run-off, including directional sheet flow over upland;

(iv) Ditches that are not identified in paragraph (1)(iii) of this definition;

(v) Prior converted cropland;

(vi) Artificially irrigated areas, including fields flooded for rice or cranberry growing, that would revert to upland should application of irrigation water to that area cease;

(vii) Artificial lakes and ponds constructed in upland (including water storage reservoirs, farm and stock watering ponds, and log cleaning ponds) which are not identified in paragraph (1)(iv) or (1)(v) of this definition;

(viii) Water-filled depressions created in upland incidental to mining or construction activity, and pits excavated in upland for the purpose of obtaining fill, sand, or gravel;

(ix) Stormwater control features excavated or constructed in upland to

convey, treat, infiltrate or store stormwater run-off;

(x) Wastewater recycling structures constructed in upland, such as detention, retention and infiltration basins and ponds, and groundwater recharge basins; and

(xi) Waste treatment systems.

(3) In this definition, the following terms apply:

(i) *Adjacent wetlands.* The term *adjacent wetlands* means wetlands that abut or have a direct hydrologic surface connection to a water identified in paragraphs (1)(i) through (v) of this definition in a typical year. Abut means to touch at least at one point or side of a water identified in paragraphs (1)(i) through (v) of this definition. A direct hydrologic surface connection occurs as a result of inundation from a paragraph (1)(i) through (v) water to a wetland or via perennial or intermittent flow between a wetland and a paragraph (1)(i) through (v) water. Wetlands physically separated from a paragraph (1)(i) through (v) water by upland or by dikes, barriers, or similar structures and also lacking a direct hydrologic surface connection to such waters are not adjacent.

(ii) *Ditch.* The term *ditch* means an artificial channel used to convey water.

(iii) *Ephemeral.* The term *ephemeral* means surface water flowing or pooling only in direct response to precipitation (*e.g.,* rain or snow fall).

(iv) *High tide line.* The term *high tide line* means the line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds, such as those accompanying a hurricane or other intense storm.

(v) *Intermittent.* The term *intermittent* means surface water flowing continuously during certain times of a typical year and more than in direct response to precipitation (*e.g.,* seasonally when the groundwater table is elevated or when snowpack melts).

(vi) *Ordinary high water mark.* The term *ordinary high water mark* means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

(vii) *Perennial.* The term *perennial* means surface water flowing continuously year-round during a typical year.

(viii) *Prior converted cropland.* The term *prior converted cropland* means any area that, prior to December 23, 1985, was drained or otherwise manipulated for the purpose, or having the effect, of making production of an agricultural product possible. EPA and the Corps will recognize designations of prior converted cropland made by the Secretary of Agriculture. An area is no longer considered *prior converted cropland* for purposes of the Clean Water Act when the area is abandoned and has reverted to wetland, as defined in paragraph (3)(xv) of this definition. Abandonment occurs when prior converted cropland is not used for, or in support of, agricultural purposes at least once in the immediately preceding five years. For the purposes of the Clean Water Act, the EPA Administrator shall have the final authority to determine whether prior converted cropland has been abandoned.

(ix) *Snowpack.* The term *snowpack* means layers of snow that accumulate over extended periods of time in certain geographic regions and high altitudes (*e.g.,* in northern climes and mountainous regions).

(x) *Tidal waters* and *waters subject to the ebb and flow of the tide.* The terms *tidal waters* and *waters subject to the ebb and flow of the tide* mean those waters that rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters and waters subject to the ebb and flow of the tide end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by hydrologic, wind, or other effects.

(xi) *Tributary.* The term *tributary* means a river, stream, or similar naturally occurring surface water channel that contributes perennial or intermittent flow to a water identified in paragraph (1)(i) of this definition in a typical year either directly or indirectly through a water(s) identified in paragraphs (1)(ii) through (vi) of this definition or through water features identified in paragraph (2) of this section so long as those water features convey perennial or intermittent flow downstream. A tributary does not lose its status as a tributary if it flows through a culvert, dam, or other similar artificial break or through a debris pile, boulder field, or similar natural break so long as the artificial or natural break conveys perennial or intermittent flow to a tributary or other jurisdictional water at the downstream end of the break. The alteration or relocation of a tributary does not modify its status as a tributary as long as it continues to satisfy the elements of this definition.

(xii) *Typical year.* The term *typical year* means within the normal range of precipitation over a rolling thirty-year period for a particular geographic area.

(xiii) *Upland.* The term *upland* means any land area that under normal circumstances does not satisfy all three wetland delineation criteria (*i.e.,* hydrology, hydrophytic vegetation, hydric soils) identified in paragraph (3)(xv) of this definition, and does not lie below the ordinary high water mark or the high tide line of a water identified in paragraph (1)(i) through (vi) of this definition. Waters identified in paragraphs (1)(i) through (vi) of this definition are not upland.

(xiv) *Waste treatment system.* The term *waste treatment system* includes all components, including lagoons and treatment ponds (such as settling or cooling ponds), designed to convey or retain, concentrate, settle, reduce, or remove pollutants, either actively or passively, from wastewater prior to discharge (or eliminating any such discharge).

(xv) *Wetlands.* The term *wetlands* means areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

* * * * *

PART 116—DESIGNATION OF HAZARDOUS SUBSTANCES

■ 7. The authority citation for part 116 is continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

■ 8. Section 116.3 is amended by revising the definition of ''Navigable waters'' to read as follows:

§ 116.3 Definitions.

* * * * *

Navigable waters means waters of the United States, including the territorial seas.

(1) For purposes of the Clean Water Act, 33 U.S.C. 1251 *et seq.* and its implementing regulations, subject to the exclusions in paragraph (2) of this definition, the term ''waters of the United States'' means:

(i) Waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including the territorial seas and waters which are subject to the ebb and flow of the tide;

(ii) Tributaries of waters identified in paragraph (1)(i) of this definition;

(iii) Ditches that satisfy any of the conditions identified in paragraph (1)(i) of this definition, ditches constructed in a tributary or that relocate or alter a tributary as long as those ditches also satisfy the conditions of the tributary definition, and ditches constructed in an adjacent wetland as long as those ditches also satisfy the conditions of the tributary definition;

(iv) Lakes and ponds that satisfy any of the conditions identified in paragraph (a)(1) of this definition, lakes and ponds that contribute perennial or intermittent flow to a water identified in paragraph (1)(i) of this definition in a typical year either directly or indirectly through a water(s) identified in paragraphs (1)(ii) through (iv) of this definition or through water features identified in paragraph (2) of this definition so long as those water features convey perennial or intermittent flow downstream, and lakes and ponds that are flooded by a water identified in paragraphs (1)(i) through (v) of this definition in a typical year;

(v) Impoundments of waters identified in paragraphs (1)(i) through (iv) and (vi) of this definition; and

(vi) Adjacent wetlands to waters identified in paragraphs (1)(i) through (v) of this definition.

(2) The following are not ''waters of the United States'':

(i) Waters or water features that are not identified in paragraphs (1)(i) through (vi) of this definition;

(ii) Groundwater, including groundwater drained through subsurface drainage systems;

(iii) Ephemeral features and diffuse stormwater run-off, including directional sheet flow over upland;

(iv) Ditches that are not identified in paragraph (1)(iii) of this definition;

(v) Prior converted cropland;

(vi) Artificially irrigated areas, including fields flooded for rice or cranberry growing, that would revert to upland should application of irrigation water to that area cease;

(vii) Artificial lakes and ponds constructed in upland (including water storage reservoirs, farm and stock watering ponds, and log cleaning ponds) which are not identified in paragraph (1)(iv) or (v) of this definition;

(viii) Water-filled depressions created in upland incidental to mining or construction activity, and pits excavated in upland for the purpose of obtaining fill, sand, or gravel;

(ix) Stormwater control features excavated or constructed in upland to convey, treat, infiltrate or store stormwater run-off;

(x) Wastewater recycling structures constructed in upland, such as detention, retention and infiltration basins and ponds, and groundwater recharge basins; and

(xi) Waste treatment systems.

(3) In this definition, the following terms apply:

(i) *Adjacent wetlands.* The term *adjacent wetlands* means wetlands that abut or have a direct hydrologic surface connection to a water identified in paragraphs (1)(i) through (v) of this definition in a typical year. Abut means to touch at least at one point or side of a water identified in paragraphs (1)(i) through (v) of this definition. A direct hydrologic surface connection occurs as a result of inundation from a paragraph (1)(i) through (v) water to a wetland or via perennial or intermittent flow between a wetland and a paragraph (1)(i) through (v) water. Wetlands physically separated from a paragraph (1)(i) through (v) water by upland or by dikes, barriers, or similar structures and also lacking a direct hydrologic surface connection to such waters are not adjacent.

(ii) *Ditch.* The term *ditch* means an artificial channel used to convey water.

(iii) *Ephemeral.* The term *ephemeral* means surface water flowing or pooling only in direct response to precipitation (*e.g.,* rain or snow fall).

(iv) *High tide line.* The term *high tide line* means the line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds, such as those accompanying a hurricane or other intense storm.

(v) *Intermittent.* The term *intermittent* means surface water flowing continuously during certain times of a typical year and more than in direct response to precipitation (*e.g.,* seasonally when the groundwater table is elevated or when snowpack melts).

(vi) *Ordinary high water mark.* The term *ordinary high water mark* means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

(vii) *Perennial.* The term *perennial* means surface water flowing continuously year-round during a typical year.

(viii) *Prior converted cropland.* The term *prior converted cropland* means any area that, prior to December 23, 1985, was drained or otherwise manipulated for the purpose, or having the effect, of making production of an agricultural product possible. EPA and the Corps will recognize designations of prior converted cropland made by the Secretary of Agriculture. An area is no longer considered *prior converted cropland* for purposes of the Clean Water Act when the area is abandoned and has reverted to wetland, as defined in paragraph (3)(xv) of this definition. Abandonment occurs when prior converted cropland is not used for, or in support of, agricultural purposes at least once in the immediately preceding five years. For the purposes of the Clean Water Act, the EPA Administrator shall have the final authority to determine whether prior converted cropland has been abandoned.

(ix) *Snowpack.* The term *snowpack* means layers of snow that accumulate over extended periods of time in certain geographic regions and high altitudes (*e.g.,* in northern climes and mountainous regions).

(x) *Tidal waters* and *waters subject to the ebb and flow of the tide.* The terms *tidal waters* and *waters subject to the ebb and flow of the tide* mean those waters that rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters and waters subject to the ebb and flow of the tide end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by hydrologic, wind, or other effects.

(xi) *Tributary.* The term *tributary* means a river, stream, or similar naturally occurring surface water

channel that contributes perennial or intermittent flow to a water identified in paragraph (1)(i) of this definition in a typical year either directly or indirectly through a water(s) identified in paragraphs (1)(ii) through (vi) of this definition or through water features identified in paragraph (2) of this section so long as those water features convey perennial or intermittent flow downstream. A tributary does not lose its status as a tributary if it flows through a culvert, dam, or other similar artificial break or through a debris pile, boulder field, or similar natural break so long as the artificial or natural break conveys perennial or intermittent flow to a tributary or other jurisdictional water at the downstream end of the break. The alteration or relocation of a tributary does not modify its status as a tributary as long as it continues to satisfy the elements of this definition.

(xii) *Typical year.* The term *typical year* means within the normal range of precipitation over a rolling thirty-year period for a particular geographic area.

(xiii) *Upland.* The term *upland* means any land area that under normal circumstances does not satisfy all three wetland delineation criteria (*i.e.,* hydrology, hydrophytic vegetation, hydric soils) identified in paragraph (3)(xv) of this definition, and does not lie below the ordinary high water mark or the high tide line of a water identified in paragraph (1)(i) through (vi) of this definition. Waters identified in paragraphs (1)(i) through (vi) of this definition are not upland.

(xiv) *Waste treatment system.* The term *waste treatment system* includes all components, including lagoons and treatment ponds (such as settling or cooling ponds), designed to convey or retain, concentrate, settle, reduce, or remove pollutants, either actively or passively, from wastewater prior to discharge (or eliminating any such discharge).

(xv) *Wetlands.* The term *wetlands* means areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

* * * * *

PART 117—DETERMINATION OF REPORTABLE QUANTITIES FOR HAZARDOUS SUBSTANCES

■ 9. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.,* and Executive Order 11735, superseded by Executive Order 12777, 56 FR 54757.

■ 10. Section 117.1 is amended by revising paragraph (i) to read as follows:

§ 117.1 Definitions.

* * * * *

(i) *Navigable waters* is defined in section 502(7) of the Act to mean ''waters of the United States, including the territorial seas.''

(1) For purposes of the Clean Water Act, 33 U.S.C. 1251 *et seq.* and its implementing regulations, subject to the exclusions in paragraph (i)(2) of this section, the term ''waters of the United States'' means:

(i) Waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including the territorial seas and waters which are subject to the ebb and flow of the tide;

(ii) Tributaries of waters identified in paragraph (i)(1)(i) of this section;

(iii) Ditches that satisfy any of the conditions identified in paragraph (i)(1)(i) of this section, ditches constructed in a tributary or that relocate or alter a tributary as long as those ditches also satisfy the conditions of the tributary definition, and ditches constructed in an adjacent wetland as long as those ditches also satisfy the conditions of the tributary definition;

(iv) Lakes and ponds that satisfy any of the conditions identified in paragraph (i)(1)(i) of this section, lakes and ponds that contribute perennial or intermittent flow to a water identified in paragraph (i)(1)(i) of this section in a typical year either directly or indirectly through a water(s) identified in paragraphs (i)(1)(ii) through (vi) of this section or through water features identified in paragraph (i)(2) of this section so long as those water features convey perennial or intermittent flow downstream, and lakes and ponds that are flooded by a water identified in paragraphs (i)(1)(i) through (v) of this section in a typical year;

(vi) Impoundments of waters identified in paragraphs (i)(1)(i) through (iv) and (vi) of this section; and

(vii) Adjacent wetlands to waters identified in paragraphs (i)(1)(i) through (v) of this section.

(2) The following are not ''waters of the United States'':

(i) Waters or water features that are not identified in paragraphs (i)(1)(i) through (vi) of this section;

(ii) Groundwater, including groundwater drained through subsurface drainage systems;

(iii) Ephemeral features and diffuse stormwater run-off, including directional sheet flow over upland;

(iv) Ditches that are not identified in paragraph (i)(1)(iii) of this section;

(v) Prior converted cropland;

(vi) Artificially irrigated areas, including fields flooded for rice or cranberry growing, that would revert to upland should application of irrigation water to that area cease;

(vii) Artificial lakes and ponds constructed in upland (including water storage reservoirs, farm and stock watering ponds, and log cleaning ponds) which are not identified in paragraph (i)(1)(iv) or (v) of this section;

(viii) Water-filled depressions created in upland incidental to mining or construction activity, and pits excavated in upland for the purpose of obtaining fill, sand, or gravel;

(ix) Stormwater control features excavated or constructed in upland to convey, treat, infiltrate or store stormwater run-off;

(x) Wastewater recycling structures constructed in upland, such as detention, retention and infiltration basins and ponds, and groundwater recharge basins; and

(xi) Waste treatment systems.

(3) In this paragraph (i), the following definitions apply:

(i) *Adjacent wetlands.* The term *adjacent wetlands* means wetlands that abut or have a direct hydrologic surface connection to a water identified in paragraphs (i)(1)(i) through (v) of this section in a typical year. Abut means to touch at least at one point or side of a water identified in paragraphs (i)(1)(i) through (v) of this section. A direct hydrologic surface connection occurs as a result of inundation from a paragraph (i)(1)(i) through (v) water to a wetland or via perennial or intermittent flow between a wetland and a paragraph (i)(1)(i) through (v) water. Wetlands physically separated from a paragraph (i)(1)(i) through (v) water by upland or by dikes, barriers, or similar structures and also lacking a direct hydrologic surface connection to such waters are not adjacent.

(ii) *Ditch.* The term *ditch* means an artificial channel used to convey water.

(iii) *Ephemeral.* The term *ephemeral* means surface water flowing or pooling only in direct response to precipitation (*e.g.,* rain or snow fall).

(iv) *High tide line.* The term *high tide line* means the line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation

lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds, such as those accompanying a hurricane or other intense storm.

(v) *Intermittent.* The term *intermittent* means surface water flowing continuously during certain times of a typical year and more than in direct response to precipitation (*e.g.,* seasonally when the groundwater table is elevated or when snowpack melts).

(vi) *Ordinary high water mark.* The term *ordinary high water mark* means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

(vii) *Perennial.* The term *perennial* means surface water flowing continuously year-round during a typical year.

(viii) *Prior converted cropland.* The term *prior converted cropland* means any area that, prior to December 23, 1985, was drained or otherwise manipulated for the purpose, or having the effect, of making production of an agricultural product possible. EPA and the Corps will recognize designations of prior converted cropland made by the Secretary of Agriculture. An area is no longer considered *prior converted cropland* for purposes of the Clean Water Act when the area is abandoned and has reverted to wetland, as defined in paragraph (i)(3)(xv) of this section. Abandonment occurs when prior converted cropland is not used for, or in support of, agricultural purposes at least once in the immediately preceding five years. For the purposes of the Clean Water Act, the EPA Administrator shall have the final authority to determine whether prior converted cropland has been abandoned.

(ix) *Snowpack.* The term *snowpack* means layers of snow that accumulate over extended periods of time in certain geographic regions and high altitudes (*e.g.,* in northern climes and mountainous regions).

(x) *Tidal waters* and *waters subject to the ebb and flow of the tide.* The terms *tidal waters* and *waters subject to the ebb and flow of the tide* mean those waters that rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters and waters subject to the ebb and flow of the tide end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by hydrologic, wind, or other effects.

(xi) *Tributary.* The term *tributary* means a river, stream, or similar naturally occurring surface water channel that contributes perennial or intermittent flow to a water identified in paragraph (i)(1)(i) of this section in a typical year either directly or indirectly through a water(s) identified in paragraphs (i)(1)(ii) through (vi) of this section or through water features identified in paragraph (i)(2) of this section so long as those water features convey perennial or intermittent flow downstream. A tributary does not lose its status as a tributary if it flows through a culvert, dam, or other similar artificial break or through a debris pile, boulder field, or similar natural break so long as the artificial or natural break conveys perennial or intermittent flow to a tributary or other jurisdictional water at the downstream end of the break. The alteration or relocation of a tributary does not modify its status as a tributary as long as it continues to satisfy the elements of this definition.

(xii) *Typical year.* The term *typical year* means within the normal range of precipitation over a rolling thirty-year period for a particular geographic area.

(xiii) *Upland.* The term *upland* means any land area that under normal circumstances does not satisfy all three wetland delineation criteria (*i.e.,* hydrology, hydrophytic vegetation, hydric soils) identified in paragraph (i)(3)(xv) of this section, and does not lie below the ordinary high water mark or the high tide line of a water identified in paragraph (i)(1)(i) through (vi) of this section. Waters identified in paragraphs (i)(1)(i) through (vi) of this section are not upland.

(xiv) *Waste treatment system.* The term *waste treatment system* includes all components, including lagoons and treatment ponds (such as settling or cooling ponds), designed to convey or retain, concentrate, settle, reduce, or remove pollutants, either actively or passively, from wastewater prior to discharge (or eliminating any such discharge).

(xv) *Wetlands.* The term *wetlands* means areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

* * * * *

PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

■ 11. The authority citation for part 122 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

■ 12. Section 122.2 is amended by revising the definition of ''Waters of the United States'' to read as follows:

§ 122.2 Definitions.

* * * * *

Waters of the United States or *waters of the U.S.* means:

(1) For purposes of the Clean Water Act, 33 U.S.C. 1251 *et seq.* and its implementing regulations, subject to the exclusions in paragraph (2) of this definition, the term ''waters of the United States'' means:

(i) Waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including the territorial seas and waters which are subject to the ebb and flow of the tide;

(ii) Tributaries of waters identified in paragraph (1)(i) of this definition;

(iii) Ditches that satisfy any of the conditions identified in paragraph (1)(i) of this definition, ditches constructed in a tributary or that relocate or alter a tributary as long as those ditches also satisfy the conditions of the tributary definition, and ditches constructed in an adjacent wetland as long as those ditches also satisfy the conditions of the tributary definition;

(iv) Lakes and ponds that satisfy any of the conditions identified in paragraph (1)(i) of this definition, lakes and ponds that contribute perennial or intermittent flow to a water identified in paragraph (1)(i) of this definition in a typical year either directly or indirectly through a water(s) identified in paragraphs (1)(ii) through (vi) of this definition or through water features identified in paragraph (2) of this definition so long as those water features convey perennial or intermittent flow downstream, and lakes and ponds that are flooded by a water identified in paragraphs (1)(i) through (v) of this definition in a typical year;

(v) Impoundments of waters identified in paragraphs (1)(i) through (iv) and (vi) of this definition; and

(vi) Adjacent wetlands to waters identified in paragraphs (1)(i) through (v) of this definition.

(2) The following are not ''waters of the United States'':

(i) Waters or water features that are not identified in paragraphs (1)(i) through (vi) of this definition;

(ii) Groundwater, including groundwater drained through subsurface drainage systems;

(iii) Ephemeral features and diffuse stormwater run-off, including directional sheet flow over upland;

(iv) Ditches that are not identified in paragraph (1)(iii) of this definition;

(v) Prior converted cropland;

(vi) Artificially irrigated areas, including fields flooded for rice or cranberry growing, that would revert to upland should application of irrigation water to that area cease;

(vii) Artificial lakes and ponds constructed in upland (including water storage reservoirs, farm and stock watering ponds, and log cleaning ponds) which are not identified in paragraph (1)(iv) or (v) of this section;

(viii) Water-filled depressions created in upland incidental to mining or construction activity, and pits excavated in upland for the purpose of obtaining fill, sand, or gravel;

(ix) Stormwater control features excavated or constructed in upland to convey, treat, infiltrate or store stormwater run-off;

(x) Wastewater recycling structures constructed in upland, such as detention, retention and infiltration basins and ponds, and groundwater recharge basins; and

(xi) Waste treatment systems.

(3) In this definition, the following terms apply:

(i) *Adjacent wetlands.* The term *adjacent wetlands* means wetlands that abut or have a direct hydrologic surface connection to a water identified in paragraphs (1)(i) through (v) of this definition in a typical year. Abut means to touch at least at one point or side of a water identified in paragraphs (1)(i) through (v) of this definition. A direct hydrologic surface connection occurs as a result of inundation from a paragraph (1)(i) through (v) water to a wetland or via perennial or intermittent flow between a wetland and a paragraph (1)(i) through (v) water. Wetlands physically separated from a paragraph (1)(i) through (v) water by upland or by dikes, barriers, or similar structures and also lacking a direct hydrologic surface connection to such waters are not adjacent.

(ii) *Ditch.* The term *ditch* means an artificial channel used to convey water.

(iii) *Ephemeral.* The term *ephemeral* means surface water flowing or pooling only in direct response to precipitation (*e.g.,* rain or snow fall).

(iv) *High tide line.* The term *high tide line* means the line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds, such as those accompanying a hurricane or other intense storm.

(v) *Intermittent.* The term *intermittent* means surface water flowing continuously during certain times of a typical year and more than in direct response to precipitation (*e.g.,* seasonally when the groundwater table is elevated or when snowpack melts).

(vi) *Ordinary high water mark.* The term *ordinary high water mark* means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

(vii) *Perennial.* The term *perennial* means surface water flowing continuously year-round during a typical year.

(viii) *Prior converted cropland.* The term *prior converted cropland* means any area that, prior to December 23, 1985, was drained or otherwise manipulated for the purpose, or having the effect, of making production of an agricultural product possible. EPA and the Corps will recognize designations of prior converted cropland made by the Secretary of Agriculture. An area is no longer considered *prior converted cropland* for purposes of the Clean Water Act when the area is abandoned and has reverted to wetland, as defined in paragraph (3)(xv) of this definition. Abandonment occurs when prior converted cropland is not used for, or in support of, agricultural purposes at least once in the immediately preceding five years. For the purposes of the Clean Water Act, the EPA Administrator shall have the final authority to determine whether prior converted cropland has been abandoned.

(ix) *Snowpack.* The term *snowpack* means layers of snow that accumulate over extended periods of time in certain geographic regions and high altitudes (*e.g.,* in northern climes and mountainous regions).

(x) *Tidal waters* and *waters subject to the ebb and flow of the tide.* The terms *tidal waters* and *waters subject to the ebb and flow of the tide* mean those waters that rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters and waters subject to the ebb and flow of the tide end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by hydrologic, wind, or other effects.

(xi) *Tributary.* The term *tributary* means a river, stream, or similar naturally occurring surface water channel that contributes perennial or intermittent flow to a water identified in paragraph (1)(i) of this definition in a typical year either directly or indirectly through a water(s) identified in paragraphs (1)(ii) through (vi) of this definition or through water features identified in paragraph (2) of this section so long as those water features convey perennial or intermittent flow downstream. A tributary does not lose its status as a tributary if it flows through a culvert, dam, or other similar artificial break or through a debris pile, boulder field, or similar natural break so long as the artificial or natural break conveys perennial or intermittent flow to a tributary or other jurisdictional water at the downstream end of the break. The alteration or relocation of a tributary does not modify its status as a tributary as long as it continues to satisfy the elements of this definition.

(xii) *Typical year.* The term *typical year* means within the normal range of precipitation over a rolling thirty-year period for a particular geographic area.

(xiii) *Upland.* The term *upland* means any land area that under normal circumstances does not satisfy all three wetland delineation criteria (*i.e.,* hydrology, hydrophytic vegetation, hydric soils) identified in paragraph (3)(xv) of this definition, and does not lie below the ordinary high water mark or the high tide line of a water identified in paragraph (1)(i) through (vi) of this definition. Waters identified in paragraphs (1)(i) through (vi) of this definition are not upland.

(xiv) *Waste treatment system.* The term *waste treatment system* includes all components, including lagoons and treatment ponds (such as settling or cooling ponds), designed to convey or

retain, concentrate, settle, reduce, or remove pollutants, either actively or passively, from wastewater prior to discharge (or eliminating any such discharge).

(xv) *Wetlands.* The term *wetlands* means areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

* * * * *

PART 230—SECTION 404(b)(1) GUIDELINES FOR SPECIFICATION OF DISPOSAL SITES FOR DREDGED OR FILL MATERIAL

■ 13. The authority citation for part 230 continues to read as follows:

Authority: The Clean Water Act, Secs. 404(b) and 501(a) of the Clean Water Act of 1977 (33 U.S.C. 1344(b) and 1361(a)).

■ 14. Section 230.3 is amended by revising paragraph (o) to read as follows:

§ 230.3 Definitions.

* * * * *

(o) The term *waters of the United States* means:

(1) For purposes of the Clean Water Act, 33 U.S.C. 1251 *et seq.* and its implementing regulations, subject to the exclusions in paragraph (o)(3) of this section, the term ''waters of the United States'' means:

(i) Waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including the territorial seas and waters which are subject to the ebb and flow of the tide;

(ii) Tributaries of waters identified in paragraph (o)(1)(i) of this section;

(iii) Ditches that satisfy any of the conditions identified in paragraph (o)(1)(i) of this section, ditches constructed in a tributary or that relocate or alter a tributary as long as those ditches also satisfy the conditions of the tributary definition, and ditches constructed in an adjacent wetland as long as those ditches also satisfy the conditions of the tributary definition;

(iv) Lakes and ponds that satisfy any of the conditions identified in paragraph (o)(1)(i) of this section, lakes and ponds that contribute perennial or intermittent flow to a water identified in paragraph (o)(1)(i) of this section in a typical year either directly or indirectly through a water(s) identified in paragraphs (o)(1)(i) of this section or through water features identified in paragraph (o)(2) of this section so long as those water features convey perennial or intermittent flow downstream, and lakes and ponds that are flooded by a water identified in paragraphs (o)(1)(i) through (v) of this section in a typical year;

(v) Impoundments of waters identified in paragraphs (o)(1)(i) through (iv) and (vi) of this section; and

(vi) Adjacent wetlands to waters identified in paragraphs (o)(1)(i) through (v) of this section.

(2) The following are not ''waters of the United States'':

(i) Waters or water features that are not identified in paragraphs (o)(1)(i) through (vi) of this section;

(ii) Groundwater, including groundwater drained through subsurface drainage systems;

(iii) Ephemeral features and diffuse stormwater run-off, including directional sheet flow over upland;

(iv) Ditches that are not identified in paragraph (o)(1)(iii) of this section;

(v) Prior converted cropland;

(vi) Artificially irrigated areas, including fields flooded for rice or cranberry growing, that would revert to upland should application of irrigation water to that area cease;

(vii) Artificial lakes and ponds constructed in upland (including water storage reservoirs, farm and stock watering ponds, and log cleaning ponds) which are not identified in paragraph (o)(1)(iv) or (v) of this section;

(viii) Water-filled depressions created in upland incidental to mining or construction activity, and pits excavated in upland for the purpose of obtaining fill, sand, or gravel;

(ix) Stormwater control features excavated or constructed in upland to convey, treat, infiltrate or store stormwater run-off;

(x) Wastewater recycling structures constructed in upland, such as detention, retention and infiltration basins and ponds, and groundwater recharge basins; and

(xi) Waste treatment systems.

(3) In this paragraph (o), the following definitions apply:

(i) *Adjacent wetlands.* The term *adjacent wetlands* means wetlands that abut or have a direct hydrologic surface connection to a water identified in paragraphs (o)(1)(i) through (v) of this section in a typical year. Abut means to touch at least at one point or side of a water identified in paragraphs (o)(1)(i) through (v) of this section. A direct hydrologic surface connection occurs as a result of inundation from a paragraph (o)(1)(i) through (v) water to a wetland or via perennial or intermittent flow between a wetland and a paragraph (o)(1)(i) through (v) water. Wetlands physically separated from a paragraph (o)(1)(i) through (v) water by upland or by dikes, barriers, or similar structures and also lacking a direct hydrologic surface connection to such waters are not adjacent.

(ii) *Ditch.* The term *ditch* means an artificial channel used to convey water.

(iii) *Ephemeral.* The term *ephemeral* means surface water flowing or pooling only in direct response to precipitation (*e.g.,* rain or snow fall).

(iv) *High tide line.* The term *high tide line* means the line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds, such as those accompanying a hurricane or other intense storm.

(v) *Intermittent.* The term *intermittent* means surface water flowing continuously during certain times of a typical year and more than in direct response to precipitation (*e.g.,* seasonally when the groundwater table is elevated or when snowpack melts).

(vi) *Ordinary high water mark.* The term *ordinary high water mark* means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

(vii) *Perennial.* The term *perennial* means surface water flowing continuously year-round during a typical year.

(viii) *Prior converted cropland.* The term *prior converted cropland* means any area that, prior to December 23, 1985, was drained or otherwise manipulated for the purpose, or having the effect, of making production of an agricultural product possible. EPA and the Corps will recognize designations of prior converted cropland made by the Secretary of Agriculture. An area is no longer considered *prior converted cropland* for purposes of the Clean

Water Act when the area is abandoned and has reverted to wetland, as defined in paragraph (o)(3)(xv) of this section. Abandonment occurs when prior converted cropland is not used for, or in support of, agricultural purposes at least once in the immediately preceding five years. For the purposes of the Clean Water Act, the EPA Administrator shall have the final authority to determine whether prior converted cropland has been abandoned.

(ix) *Snowpack.* The term *snowpack* means layers of snow that accumulate over extended periods of time in certain geographic regions and high altitudes (*e.g.,* in northern climes and mountainous regions).

(x) *Tidal waters* and *waters subject to the ebb and flow of the tide.* The terms *tidal waters* and *waters subject to the ebb and flow of the tide* mean those waters that rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters and waters subject to the ebb and flow of the tide end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by hydrologic, wind, or other effects.

(xi) *Tributary.* The term *tributary* means a river, stream, or similar naturally occurring surface water channel that contributes perennial or intermittent flow to a water identified in paragraph (o)(1)(i) of this section in a typical year either directly or indirectly through a water(s) identified in paragraphs (o)(1)(i) through (vi) of this section or through water features identified in paragraph (o)(3) of this section so long as those water features convey perennial or intermittent flow downstream. A tributary does not lose its status as a tributary if it flows through a culvert, dam, or other similar artificial break or through a debris pile, boulder field, or similar natural break so long as the artificial or natural break conveys perennial or intermittent flow to a tributary or other jurisdictional water at the downstream end of the break. The alteration or relocation of a tributary does not modify its status as a tributary as long as it continues to satisfy the elements of this definition.

(xii) *Typical year.* The term *typical year* means within the normal range of precipitation over a rolling thirty-year period for a particular geographic area.

(xiii) *Upland.* The term *upland* means any land area that under normal circumstances does not satisfy all three wetland delineation criteria (*i.e.,* hydrology, hydrophytic vegetation, hydric soils) identified in paragraph (o)(3)(xv) of this section, and does not lie below the ordinary high water mark or the high tide line of a water identified in paragraph (o)(1)(i) through (vi) of this section. Waters identified in paragraphs (o)(1)(i) through (vi) of this section are not upland.

(xiv) *Waste treatment system.* The term *waste treatment system* includes all components, including lagoons and treatment ponds (such as settling or cooling ponds), designed to convey or retain, concentrate, settle, reduce, or remove pollutants, either actively or passively, from wastewater prior to discharge (or eliminating any such discharge).

(xv) *Wetlands.* The term *wetlands* means areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

PART 232—404 PROGRAMS DEFINITIONS; EXEMPT ACTIVITIES NOT REQUIRING 404 PERMITS

■ 15. The authority citation for part 232 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

■ 16. Section 232.2 is amended by revising the definition of ''Waters of the United States'' to read as follows:

§ 232.2 Definitions.

* * * * *

Waters of the United States means:

(1) For purposes of the Clean Water Act, 33 U.S.C. 1251 *et seq.* and its implementing regulations, subject to the exclusions in paragraph (2) of this definition, the term ''waters of the United States'' means:

(i) Waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including the territorial seas and waters which are subject to the ebb and flow of the tide;

(ii) Tributaries of waters identified in paragraph (1)(i) of this definition;

(iii) Ditches that satisfy any of the conditions identified in paragraph (1)(i) of this definition, ditches constructed in a tributary or that relocate or alter a tributary as long as those ditches also satisfy the conditions of the tributary definition, and ditches constructed in an adjacent wetland as long as those ditches also satisfy the conditions of the tributary definition;

(iv) Lakes and ponds that satisfy any of the conditions identified in paragraph (1)(i) of this definition, lakes and ponds that contribute perennial or intermittent flow to a water identified in paragraph (1)(i) of this definition in a typical year either directly or indirectly through a water(s) identified in paragraphs (1)(ii) through (vi) of this definition or through water features identified in paragraph (2) of this definition so long as those water features convey perennial or intermittent flow downstream, and lakes and ponds that are flooded by a water identified in paragraphs (1)(i) through (v) of this definition in a typical year;

(v) Impoundments of waters identified in paragraphs (1)(i) through (iv) and (vi) of this definition; and

(vi) Adjacent wetlands to waters identified in paragraphs (1)(i) through (v) of this definition.

(2) The following are not ''waters of the United States'':

(i) Waters or water features that are not identified in paragraphs (1)(i) through (vi) of this definition;

(ii) Groundwater, including groundwater drained through subsurface drainage systems;

(iii) Ephemeral features and diffuse stormwater run-off, including directional sheet flow over upland;

(iv) Ditches that are not identified in paragraph (1)(iii) of this definition;

(v) Prior converted cropland;

(vi) Artificially irrigated areas, including fields flooded for rice or cranberry growing, that would revert to upland should application of irrigation water to that area cease;

(vii) Artificial lakes and ponds constructed in upland (including water storage reservoirs, farm and stock watering ponds, and log cleaning ponds) which are not identified in paragraph (1)(iv) or (v) of this definition;

(viii) Water-filled depressions created in upland incidental to mining or construction activity, and pits excavated in upland for the purpose of obtaining fill, sand, or gravel;

(ix) Stormwater control features excavated or constructed in upland to convey, treat, infiltrate or store stormwater run-off;

(x) Wastewater recycling structures constructed in upland, such as detention, retention and infiltration basins and ponds, and groundwater recharge basins; and

(xi) Waste treatment systems.

(3) In this definition, the following terms apply:

(i) *Adjacent wetlands.* The term *adjacent wetlands* means wetlands that abut or have a direct hydrologic surface connection to a water identified in paragraphs (1)(i) through (v) of this definition in a typical year. Abut means to touch at least at one point or side of a water identified in paragraphs (1)(i) through (v) of this definition. A direct hydrologic surface connection occurs as

a result of inundation from a paragraph (1)(i) through (v) water to a wetland or via perennial or intermittent flow between a wetland and a paragraph (1)(i) through (v) water. Wetlands physically separated from a paragraph (1)(i) through (v) water by upland or by dikes, barriers, or similar structures and also lacking a direct hydrologic surface connection to such waters are not adjacent.

(ii) *Ditch.* The term *ditch* means an artificial channel used to convey water.

(iii) *Ephemeral.* The term *ephemeral* means surface water flowing or pooling only in direct response to precipitation (*e.g.,* rain or snow fall).

(iv) *High tide line.* The term *high tide line* means the line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds, such as those accompanying a hurricane or other intense storm.

(v) *Intermittent.* The term *intermittent* means surface water flowing continuously during certain times of a typical year and more than in direct response to precipitation (*e.g.,* seasonally when the groundwater table is elevated or when snowpack melts).

(vi) *Ordinary high water mark.* The term *ordinary high water mark* means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

(vii) *Perennial.* The term *perennial* means surface water flowing continuously year-round during a typical year.

(viii) *Prior converted cropland.* The term *prior converted cropland* means any area that, prior to December 23, 1985, was drained or otherwise manipulated for the purpose, or having the effect, of making production of an agricultural product possible. EPA and the Corps will recognize designations of prior converted cropland made by the Secretary of Agriculture. An area is no longer considered *prior converted cropland* for purposes of the Clean Water Act when the area is abandoned and has reverted to wetland, as defined in paragraph (3)(xv) of this definition. Abandonment occurs when prior converted cropland is not used for, or in support of, agricultural purposes at least once in the immediately preceding five years. For the purposes of the Clean Water Act, the EPA Administrator shall have the final authority to determine whether prior converted cropland has been abandoned.

(ix) *Snowpack.* The term *snowpack* means layers of snow that accumulate over extended periods of time in certain geographic regions and high altitudes (*e.g.,* in northern climes and mountainous regions).

(x) *Tidal waters* and *waters subject to the ebb and flow of the tide.* The terms *tidal waters* and *waters subject to the ebb and flow of the tide* mean those waters that rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters and waters subject to the ebb and flow of the tide end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by hydrologic, wind, or other effects.

(xi) *Tributary.* The term *tributary* means a river, stream, or similar naturally occurring surface water channel that contributes perennial or intermittent flow to a water identified in paragraph (1)(i) of this section in a typical year either directly or indirectly through a water(s) identified in paragraphs (1)(ii) through (vi) of this section or through water features identified in paragraph (b) of this section so long as those water features convey perennial or intermittent flow downstream. A tributary does not lose its status as a tributary if it flows through a culvert, dam, or other similar artificial break or through a debris pile, boulder field, or similar natural break so long as the artificial or natural break conveys perennial or intermittent flow to a tributary or other jurisdictional water at the downstream end of the break. The alteration or relocation of a tributary does not modify its status as a tributary as long as it continues to satisfy the elements of this definition.

(xii) *Typical year.* The term *typical year* means within the normal range of precipitation over a rolling thirty-year period for a particular geographic area.

(xiii) *Upland.* The term *upland* means any land area that under normal circumstances does not satisfy all three wetland delineation criteria (*i.e.,* hydrology, hydrophytic vegetation, hydric soils) identified in paragraph (3)(xv) of this definition, and does not lie below the ordinary high water mark or the high tide line of a water identified in paragraph (1)(i) through (vi) of this definition. Waters identified in paragraphs (1)(i) through (vi) of this definition are not upland.

(xvi) *Waste treatment system.* The term *waste treatment system* includes all components, including lagoons and treatment ponds (such as settling or cooling ponds), designed to convey or retain, concentrate, settle, reduce, or remove pollutants, either actively or passively, from wastewater prior to discharge (or eliminating any such discharge).

(xv) *Wetlands.* The term *wetlands* means areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

PART 300—NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN

■ 17. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

■ 18. Section 300.5 is amended by revising the definition of ''Navigable waters'' to read as follows:

§ 300.5 Definitions.

* * * * *

Navigable waters means the waters of the United States, including the territorial seas.

(1) For purposes of the Clean Water Act, 33 U.S.C. 1251 *et seq.* and its implementing regulations, subject to the exclusions in paragraph (2) of this definition, the term ''waters of the United States'' means:

(i) Waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including the territorial seas and waters which are subject to the ebb and flow of the tide;

(ii) Tributaries of waters identified in paragraph (1)(i) of this definition;

(iii) Ditches that satisfy any of the conditions identified in paragraph (1)(i) of this definition, ditches constructed in a tributary or that relocate or alter a tributary as long as those ditches also satisfy the conditions of the tributary definition, and ditches constructed in

an adjacent wetland as long as those ditches also satisfy the conditions of the tributary definition;

(iv) Lakes and ponds that satisfy any of the conditions identified in paragraph (1)(i) of this definition, lakes and ponds that contribute perennial or intermittent flow to a water identified in paragraph (1)(i) of this definition in a typical year either directly or indirectly through a water(s) identified in paragraphs (1)(ii) through (vi) of this definition or through water features identified in paragraph (2) of this section so long as those water features convey perennial or intermittent flow downstream, and lakes and ponds that are flooded by a water identified in paragraphs (1)(i) through (v) of this definition in a typical year;

(v) Impoundments of waters identified in paragraphs (1)(i) through (iv) and (vi) of this definition; and

(vi) Adjacent wetlands to waters identified in paragraphs (1)(i) through (v) of this definition.

(2) The following are not ''waters of the United States'':

(i) Waters or water features that are not identified in paragraphs (1)(i) through (vi) of this definition;

(ii) Groundwater, including groundwater drained through subsurface drainage systems;

(iii) Ephemeral features and diffuse stormwater run-off, including directional sheet flow over upland;

(iv) Ditches that are not identified in paragraph (1)(iii) of this definition;

(v) Prior converted cropland;

(vi) Artificially irrigated areas, including fields flooded for rice or cranberry growing, that would revert to upland should application of irrigation water to that area cease;

(vii) Artificial lakes and ponds constructed in upland (including water storage reservoirs, farm and stock watering ponds, and log cleaning ponds) which are not identified in paragraph (1)(iv) or (v) of this definition;

(viii) Water-filled depressions created in upland incidental to mining or construction activity, and pits excavated in upland for the purpose of obtaining fill, sand, or gravel;

(ix) Stormwater control features excavated or constructed in upland to convey, treat, infiltrate or store stormwater run-off;

(x) Wastewater recycling structures constructed in upland, such as detention, retention and infiltration basins and ponds, and groundwater recharge basins; and

(xi) Waste treatment systems.

(3) In this definition, the following definitions apply:

(i) *Adjacent wetlands.* The term *adjacent wetlands* means wetlands that abut or have a direct hydrologic surface connection to a water identified in paragraphs (1)(i) through (v) of this definition in a typical year. Abut means to touch at least at one point or side of a water identified in paragraphs (1)(i) through (v) of this definition. A direct hydrologic surface connection occurs as a result of inundation from a paragraph (1)(i) through (v) water to a wetland or via perennial or intermittent flow between a wetland and a paragraph (1)(i) through (v) water. Wetlands physically separated from a paragraph (1)(i) through (v) water by upland or by dikes, barriers, or similar structures and also lacking a direct hydrologic surface connection to such waters are not adjacent.

(ii) *Ditch.* The term *ditch* means an artificial channel used to convey water.

(iii) *Ephemeral.* The term *ephemeral* means surface water flowing or pooling only in direct response to precipitation (*e.g.,* rain or snow fall).

(iv) *High tide line.* The term *high tide line* means the line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds, such as those accompanying a hurricane or other intense storm.

(v) *Intermittent.* The term *intermittent* means surface water flowing continuously during certain times of a typical year and more than in direct response to precipitation (*e.g.,* seasonally when the groundwater table is elevated or when snowpack melts).

(vi) *Ordinary high water mark.* The term *ordinary high water mark* means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

(vii) *Perennial.* The term *perennial* means surface water flowing continuously year-round during a typical year.

(viii) *Prior converted cropland.* The term *prior converted cropland* means any area that, prior to December 23, 1985, was drained or otherwise manipulated for the purpose, or having the effect, of making production of an agricultural product possible. EPA and the Corps will recognize designations of prior converted cropland made by the Secretary of Agriculture. An area is no longer considered *prior converted cropland* for purposes of the Clean Water Act when the area is abandoned and has reverted to wetland, as defined in paragraph (3)(xv) of this definition. Abandonment occurs when prior converted cropland is not used for, or in support of, agricultural purposes at least once in the immediately preceding five years. For the purposes of the Clean Water Act, the EPA Administrator shall have the final authority to determine whether prior converted cropland has been abandoned.

(ix) *Snowpack.* The term *snowpack* means layers of snow that accumulate over extended periods of time in certain geographic regions and high altitudes (*e.g.,* in northern climes and mountainous regions).

(x) *Tidal waters* and *waters subject to the ebb and flow of the tide.* The terms *tidal waters* and *waters subject to the ebb and flow of the tide* mean those waters that rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters and waters subject to the ebb and flow of the tide end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by hydrologic, wind, or other effects.

(xi) *Tributary.* The term *tributary* means a river, stream, or similar naturally occurring surface water channel that contributes perennial or intermittent flow to a water identified in paragraph (1)(i) of this definition in a typical year either directly or indirectly through a water(s) identified in paragraphs (1)(ii) through (vi) of this definition or through water features identified in paragraph (2) of this definition so long as those water features convey perennial or intermittent flow downstream. A tributary does not lose its status as a tributary if it flows through a culvert, dam, or other similar artificial break or through a debris pile, boulder field, or similar natural break so long as the artificial or natural break conveys perennial or intermittent flow to a tributary or other jurisdictional water at the downstream end of the break. The alteration or relocation of a tributary

does not modify its status as a tributary as long as it continues to satisfy the elements of this definition.

(xii) *Typical year.* The term *typical year* means within the normal range of precipitation over a rolling thirty-year period for a particular geographic area.

(xiii) *Upland.* The term *upland* means any land area that under normal circumstances does not satisfy all three wetland delineation criteria (*i.e.,* hydrology, hydrophytic vegetation, hydric soils) identified in paragraph (3)(xv) of this definition, and does not lie below the ordinary high water mark or the high tide line of a water identified in paragraph (1)(i) through (vi) of this definition. Waters identified in paragraphs (1)(i) through (vi) of this definition are not upland.

(xiv) *Waste treatment system.* The term *waste treatment system* includes all components, including lagoons and treatment ponds (such as settling or cooling ponds), designed to convey or retain, concentrate, settle, reduce, or remove pollutants, either actively or passively, from wastewater prior to discharge (or eliminating any such discharge).

(xv) *Wetlands.* The term *wetlands* means areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

* * * * *

■ 19. In appendix E to part 300, section 1.5 Definitions is amended by revising the definition of ''Navigable waters'' to read as follows:

Appendix E to Part 300—Oil Spill Response

* * * * *

1.5 Definitions. * * *

Navigable waters means the waters of the United States, including the territorial seas.

(1) For purposes of the Clean Water Act, 33 U.S.C. 1251 *et seq.* and its implementing regulations, subject to the exclusions in paragraph (2) of this definition, the term ''waters of the United States'' means:

(i) Waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including the territorial seas and waters which are subject to the ebb and flow of the tide;

(ii) Tributaries of waters identified in paragraph (1)(i) of this definition;

(iii) Ditches that satisfy any of the conditions identified in paragraph (1)(i) of this definition, ditches constructed in a tributary or that relocate or alter a tributary as long as those ditches also satisfy the conditions of the tributary definition, and ditches constructed in an adjacent wetland as long as those ditches also satisfy the conditions of the tributary definition;

(iv) Lakes and ponds that satisfy any of the conditions identified in paragraph (1)(i) of this definition, lakes and ponds that contribute perennial or intermittent flow to a water identified in paragraph (1)(i) of this section in a typical year either directly or indirectly through a water(s) identified in paragraphs (1)(ii) through (vi) of this definition or through water features identified in paragraph (2) of this definition so long as those water features convey perennial or intermittent flow downstream, and lakes and ponds that are flooded by a water identified in paragraphs (1)(i) through (v) of this definition in a typical year;

(v) Impoundments of waters identified in paragraphs (1)(i) through (iv) and (vi) of this definition; and

(vi) Adjacent wetlands to waters identified in paragraphs (1)(i) through (v) of this section.

(2) The following are not ''waters of the United States'':

(i) Waters or water features that are not identified in paragraphs (1)(i) through (vi) of this definition;

(ii) Groundwater, including groundwater drained through subsurface drainage systems;

(iii) Ephemeral features and diffuse stormwater run-off, including directional sheet flow over upland;

(iv) Ditches that are not identified in paragraph (1)(iii) of this definition;

(v) Prior converted cropland;

(vi) Artificially irrigated areas, including fields flooded for rice or cranberry growing, that would revert to upland should application of irrigation water to that area cease;

(vii) Artificial lakes and ponds constructed in upland (including water storage reservoirs, farm and stock watering ponds, and log cleaning ponds) which are not identified in paragraph (1)(iv) or (v) of this definition;

(viii) Water-filled depressions created in upland incidental to mining or construction activity, and pits excavated in upland for the purpose of obtaining fill, sand, or gravel;

(xi) Stormwater control features excavated or constructed in upland to convey, treat, infiltrate or store stormwater run-off;

(x) Wastewater recycling structures constructed in upland, such as detention, retention and infiltration basins and ponds, and groundwater recharge basins; and

(xi) Waste treatment systems.

(3) In this definition, the following terms apply:

(i) *Adjacent wetlands.* The term *adjacent wetlands* means wetlands that abut or have a direct hydrologic surface connection to a water identified in paragraphs (1)(i) through (v) of this definition in a typical year. Abut means to touch at least at one point or side of a water identified in paragraphs (1)(i) through (v) of this definition. A direct hydrologic surface connection occurs as a result of inundation from a paragraph (1)(i) through (v) water to a wetland or via perennial or intermittent flow between a wetland and a paragraph (1)(i) through (v) water. Wetlands physically separated from a paragraph (1)(i) through (v) water by upland or by dikes, barriers, or similar structures and also lacking a direct hydrologic surface connection to such waters are not adjacent.

(ii) *Ditch.* The term *ditch* means an artificial channel used to convey water.

(iii) *Ephemeral.* The term *ephemeral* means surface water flowing or pooling only in direct response to precipitation (*e.g.,* rain or snow fall).

(iv) *High tide line.* The term *high tide line* means the line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds, such as those accompanying a hurricane or other intense storm.

(v) *Intermittent.* The term *intermittent* means surface water flowing continuously during certain times of a typical year and more than in direct response to precipitation (*e.g.,* seasonally when the groundwater table is elevated or when snowpack melts).

(vi) *Ordinary high water mark.* The term *ordinary high water mark* means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

(vii) *Perennial.* The term *perennial* means surface water flowing continuously year-round during a typical year.

(viii) *Prior converted cropland.* The term *prior converted cropland* means any area that, prior to December 23, 1985, was drained or otherwise manipulated for the purpose, or having the effect, of making production of an agricultural product possible. EPA and the Corps will recognize designations of prior converted cropland made by the Secretary of Agriculture. An area is no longer considered *prior converted cropland* for purposes of the Clean Water Act when the area is abandoned and has reverted to wetland, as defined in paragraph (3)(xv) of this definition. Abandonment occurs when prior converted cropland is not used for, or in support of, agricultural purposes at least once in the immediately preceding five years. For the purposes of the Clean Water Act, the EPA Administrator shall have the final authority to determine whether prior converted cropland has been abandoned.

(ix) *Snowpack.* The term *snowpack* means layers of snow that accumulate over extended periods of time in certain geographic regions and high altitudes (*e.g.,* in northern climes and mountainous regions).

(x) *Tidal waters* and *waters subject to the ebb and flow of the tide.* The terms *tidal*

waters and *waters subject to the ebb and flow of the tide* mean those waters that rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters and waters subject to the ebb and flow of the tide end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by hydrologic, wind, or other effects.

(xi) *Tributary.* The term *tributary* means a river, stream, or similar naturally occurring surface water channel that contributes perennial or intermittent flow to a water identified in paragraph (1)(i) of this definition in a typical year either directly or indirectly through a water(s) identified in paragraphs (1)(ii) through (vi) of this definition or through water features identified in paragraph (2) of this definition so long as those water features convey perennial or intermittent flow downstream. A tributary does not lose its status as a tributary if it flows through a culvert, dam, or other similar artificial break or through a debris pile, boulder field, or similar natural break so long as the artificial or natural break conveys perennial or intermittent flow to a tributary or other jurisdictional water at the downstream end of the break. The alteration or relocation of a tributary does not modify its status as a tributary as long as it continues to satisfy the elements of this definition.

(xii) *Typical year.* The term *typical year* means within the normal range of precipitation over a rolling thirty-year period for a particular geographic area.

(xiii) *Upland.* The term *upland* means any land area that under normal circumstances does not satisfy all three wetland delineation criteria (*i.e.,* hydrology, hydrophytic vegetation, hydric soils) identified in paragraph (3)(xv) of this definition, and does not lie below the ordinary high water mark or the high tide line of a water identified in paragraph (1)(i) through (vi) of this definition. Waters identified in paragraphs (1)(i) through (vi) of this definition are not upland.

(xiv) *Waste treatment system.* The term *waste treatment system* includes all components, including lagoons and treatment ponds (such as settling or cooling ponds), designed to convey or retain, concentrate, settle, reduce, or remove pollutants, either actively or passively, from wastewater prior to discharge (or eliminating any such discharge).

(xv) *Wetlands.* The term *wetlands* means areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

* * * * *

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

■ 20. The authority citation for part 302 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

■ 21. Section 302.3 is amended by revising the definition of ''Navigable waters'' to read as follows:

§ 302.3 Definitions.

* * * * *

Navigable waters means the waters of the United States, including the territorial seas.

(1) For purposes of the Clean Water Act, 33 U.S.C. 1251 *et seq.* and its implementing regulations, subject to the exclusions in paragraph (2) of this definition, the term ''waters of the United States'' means:

(i) Waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including the territorial seas and waters which are subject to the ebb and flow of the tide;

(ii) Tributaries of waters identified in paragraph (1)(i) of this definition;

(iii) Ditches that satisfy any of the conditions identified in paragraph (1)(i) of this definition, ditches constructed in a tributary or that relocate or alter a tributary as long as those ditches also satisfy the conditions of the tributary definition, and ditches constructed in an adjacent wetland as long as those ditches also satisfy the conditions of the tributary definition;

(iv) Lakes and ponds that satisfy any of the conditions identified in paragraph (1)(i) of this definition, lakes and ponds that contribute perennial or intermittent flow to a water identified in paragraph (1)(i) of this definition in a typical year either directly or indirectly through a water(s) identified in paragraphs (1)(ii) through (vi) of this definition or through water features identified in paragraph (2) of this definition so long as those water features convey perennial or intermittent flow downstream, and lakes and ponds that are flooded by a water identified in paragraphs (1)(i) through (v) of this definition in a typical year;

(v) Impoundments of waters identified in paragraphs (1)(i) through (iv) and (vi) of this definition; and

(vi) Adjacent wetlands to waters identified in paragraphs (1)(i) through (v) of this definition.

(2) The following are not ''waters of the United States'':

(i) Waters or water features that are not identified in paragraphs (1)(i) through (vi) of this definition;

(ii) Groundwater, including groundwater drained through subsurface drainage systems;

(iii) Ephemeral features and diffuse stormwater run-off, including directional sheet flow over upland;

(iv) Ditches that are not identified in paragraph (1)(iii) of this definition;

(v) Prior converted cropland;

(vi) Artificially irrigated areas, including fields flooded for rice or cranberry growing, that would revert to upland should application of irrigation water to that area cease;

(vii) Artificial lakes and ponds constructed in upland (including water storage reservoirs, farm and stock watering ponds, and log cleaning ponds) which are not identified in paragraph (1)(iv) or (v) of this definition;

(viii) Water-filled depressions created in upland incidental to mining or construction activity, and pits excavated in upland for the purpose of obtaining fill, sand, or gravel;

(xi) Stormwater control features excavated or constructed in upland to convey, treat, infiltrate or store stormwater run-off;

(x) Wastewater recycling structures constructed in upland, such as detention, retention and infiltration basins and ponds, and groundwater recharge basins; and

(xi) Waste treatment systems.

(3) In this definition, the following terms apply:

(i) *Adjacent wetlands.* The term *adjacent wetlands* means wetlands that abut or have a direct hydrologic surface connection to a water identified in paragraphs (1)(i) through (v) of this definition in a typical year. Abut means to touch at least at one point or side of a water identified in paragraphs (1)(i) through (v) of this definition. A direct hydrologic surface connection occurs as a result of inundation from a paragraph (1)(i) through (v) water to a wetland or via perennial or intermittent flow between a wetland and a paragraph (1)(i) through (v) water. Wetlands physically separated from a paragraph (1)(i) through (v) water by upland or by dikes, barriers, or similar structures and also lacking a direct hydrologic surface connection to such waters are not adjacent.

(ii) *Ditch.* The term *ditch* means an artificial channel used to convey water.

(iii) *Ephemeral.* The term *ephemeral* means surface water flowing or pooling only in direct response to precipitation (*e.g.,* rain or snow fall).

(iv) *High tide line.* The term *high tide line* means the line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line

encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds, such as those accompanying a hurricane or other intense storm.

(v) *Intermittent.* The term *intermittent* means surface water flowing continuously during certain times of a typical year and more than in direct response to precipitation (*e.g.,* seasonally when the groundwater table is elevated or when snowpack melts).

(vi) *Ordinary high water mark.* The term *ordinary high water mark* means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

(vii) *Perennial.* The term *perennial* means surface water flowing continuously year-round during a typical year.

(viii) *Prior converted cropland.* The term *prior converted cropland* means any area that, prior to December 23, 1985, was drained or otherwise manipulated for the purpose, or having the effect, of making production of an agricultural product possible. EPA and the Corps will recognize designations of prior converted cropland made by the Secretary of Agriculture. An area is no longer considered *prior converted cropland* for purposes of the Clean Water Act when the area is abandoned and has reverted to wetland, as defined in paragraph (3)(xv) of this section. Abandonment occurs when prior converted cropland is not used for, or in support of, agricultural purposes at least once in the immediately preceding five years. For the purposes of the Clean Water Act, the EPA Administrator shall have the final authority to determine whether prior converted cropland has been abandoned.

(ix) *Snowpack.* The term *snowpack* means layers of snow that accumulate over extended periods of time in certain geographic regions and high altitudes (*e.g.,* in northern climes and mountainous regions).

(x) *Tidal waters* and *waters subject to the ebb and flow of the tide.* The terms *tidal waters* and *waters subject to the ebb and flow of the tide* mean those waters that rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters and waters subject to the ebb and flow of the tide end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by hydrologic, wind, or other effects.

(xi) *Tributary.* The term *tributary* means a river, stream, or similar naturally occurring surface water channel that contributes perennial or intermittent flow to a water identified in paragraph (1)(i) of this section in a typical year either directly or indirectly through a water(s) identified in paragraphs (1)(ii) through (vi) of this definition or through water features identified in paragraph (2) of this definition so long as those water features convey perennial or intermittent flow downstream. A tributary does not lose its status as a tributary if it flows through a culvert, dam, or other similar artificial break or through a debris pile, boulder field, or similar natural break so long as the artificial or natural break conveys perennial or intermittent flow to a tributary or other jurisdictional water at the downstream end of the break. The alteration or relocation of a tributary does not modify its status as a tributary as long as it continues to satisfy the elements of this definition.

(xii) *Typical year.* The term *typical year* means within the normal range of precipitation over a rolling thirty-year period for a particular geographic area.

(xiii) *Upland.* The term *upland* means any land area that under normal circumstances does not satisfy all three wetland delineation criteria (*i.e.,* hydrology, hydrophytic vegetation, hydric soils) identified in paragraph (3)(xv) of this section, and does not lie below the ordinary high water mark or the high tide line of a water identified in paragraph (1)(i) through (vi) of this definition. Waters identified in paragraphs (1)(i) through (vi) of this definition are not upland.

(xiv) *Waste treatment system.* The term *waste treatment system* includes all components, including lagoons and treatment ponds (such as settling or cooling ponds), designed to convey or retain, concentrate, settle, reduce, or remove pollutants, either actively or passively, from wastewater prior to discharge (or eliminating any such discharge).

(xv) *Wetlands.* The term *wetlands* means areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

* * * * *

PART 401—GENERAL PROVISIONS

■ 22. The authority citation for part 401 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

■ 23. Section 401.11 is amended by revising paragraph (l) to read as follows:

§ 401.11 General definitions.

* * * * *

(l) *Navigable waters* means ''waters of the United States, including the territorial seas.''

(1) For purposes of the Clean Water Act, 33 U.S.C. 1251 *et seq.* and its implementing regulations, subject to the exclusions in paragraph (l)(2) of this section, the term ''waters of the United States'' means:

(i) Waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including the territorial seas and waters which are subject to the ebb and flow of the tide;

(ii) Tributaries of waters identified in paragraph (l)(1)(i) of this section;

(iii) Ditches that satisfy any of the conditions identified in paragraph (l)(1)(i) of this section, ditches constructed in a tributary or that relocate or alter a tributary as long as those ditches also satisfy the conditions of the tributary definition, and ditches constructed in an adjacent wetland as long as those ditches also satisfy the conditions of the tributary definition;

(iv) Lakes and ponds that satisfy any of the conditions identified in paragraph (l)(1)(i) of this section, lakes and ponds that contribute perennial or intermittent flow to a water identified in paragraph (l)(1)(i) of this section in a typical year either directly or indirectly through a water(s) identified in paragraphs (l)(1)(ii) through (vi) of this section or through water features identified in paragraph (l)(2) of this section so long as those water features convey perennial or intermittent flow downstream, and lakes and ponds that are flooded by a water identified in paragraphs (l)(1)(i) through (v) of this section in a typical year;

(v) Impoundments of waters identified in paragraphs (l)(1)(i) through (iv) and (vi) of this section; and

(vi) Adjacent wetlands to waters identified in paragraphs (l)(1)(i) through (v) of this section.

(2) The following are not ''waters of the United States'':

(i) Waters or water features that are not identified in paragraphs (l)(1)(i) through (vi) of this section;

(ii) Groundwater, including groundwater drained through subsurface drainage systems;

(iii) Ephemeral features and diffuse stormwater run-off, including directional sheet flow over upland;

(iv) Ditches that are not identified in paragraph (l)(1)(iii) of this section;

(v) Prior converted cropland;

(vi) Artificially irrigated areas, including fields flooded for rice or cranberry growing, that would revert to upland should application of irrigation water to that area cease;

(vii) Artificial lakes and ponds constructed in upland (including water storage reservoirs, farm and stock watering ponds, and log cleaning ponds) which are not identified in paragraph (l)(1)(iv) or (v) of this section;

(viii) Water-filled depressions created in upland incidental to mining or construction activity, and pits excavated in upland for the purpose of obtaining fill, sand, or gravel;

(ix) Stormwater control features excavated or constructed in upland to convey, treat, infiltrate or store stormwater run-off;

(x) Wastewater recycling structures constructed in upland, such as detention, retention and infiltration basins and ponds, and groundwater recharge basins; and

(xi) Waste treatment systems.

(3) In this paragraph (l), the following definitions apply:

(i) *Adjacent wetlands.* The term *adjacent wetlands* means wetlands that abut or have a direct hydrologic surface connection to a water identified in paragraphs (l)(1)(i) through (v) of this section in a typical year. Abut means to touch at least at one point or side of a water identified in paragraphs (l)(1)(i) through (v) of this section. A direct hydrologic surface connection occurs as a result of inundation from a paragraph (l)(1)(i) through (v) water to a wetland or via perennial or intermittent flow between a wetland and a paragraph (l)(1)(i) through (v) water. Wetlands physically separated from a paragraph (l)(1)(i) through (v) water by upland or by dikes, barriers, or similar structures and also lacking a direct hydrologic surface connection to such waters are not adjacent.

(ii) *Ditch.* The term *ditch* means an artificial channel used to convey water.

(iii) *Ephemeral.* The term *ephemeral* means surface water flowing or pooling only in direct response to precipitation (*e.g.,* rain or snow fall).

(iv) *High tide line.* The term *high tide line* means the line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds, such as those accompanying a hurricane or other intense storm.

(v) *Intermittent.* The term *intermittent* means surface water flowing continuously during certain times of a typical year and more than in direct response to precipitation (*e.g.,* seasonally when the groundwater table is elevated or when snowpack melts).

(vi) *Ordinary high water mark.* The term *ordinary high water mark* means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

(vii) *Perennial.* The term *perennial* means surface water flowing continuously year-round during a typical year.

(viii) *Prior converted cropland.* The term *prior converted cropland* means any area that, prior to December 23, 1985, was drained or otherwise manipulated for the purpose, or having the effect, of making production of an agricultural product possible. EPA and the Corps will recognize designations of prior converted cropland made by the Secretary of Agriculture. An area is no longer considered *prior converted cropland* for purposes of the Clean Water Act when the area is abandoned and has reverted to wetland, as defined in paragraph (l)(3)(xv) of this section. Abandonment occurs when prior converted cropland is not used for, or in support of, agricultural purposes at least once in the immediately preceding five years. For the purposes of the Clean Water Act, the EPA Administrator shall have the final authority to determine whether prior converted cropland has been abandoned.

(ix) *Snowpack.* The term *snowpack* means layers of snow that accumulate over extended periods of time in certain geographic regions and high altitudes (*e.g.,* in northern climes and mountainous regions).

(x) *Tidal waters* and *waters subject to the ebb and flow of the tide.* The terms *tidal waters* and *waters subject to the ebb and flow of the tide* mean those waters that rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters and waters subject to the ebb and flow of the tide end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by hydrologic, wind, or other effects.

(xi) *Tributary.* The term *tributary* means a river, stream, or similar naturally occurring surface water channel that contributes perennial or intermittent flow to a water identified in paragraph (l)(1)(i) of this section in a typical year either directly or indirectly through a water(s) identified in paragraphs (l)(1)(ii) through (vi) of this section or through water features identified in paragraph (l)(2) of this section so long as those water features convey perennial or intermittent flow downstream. A tributary does not lose its status as a tributary if it flows through a culvert, dam, or other similar artificial break or through a debris pile, boulder field, or similar natural break so long as the artificial or natural break conveys perennial or intermittent flow to a tributary or other jurisdictional water at the downstream end of the break. The alteration or relocation of a tributary does not modify its status as a tributary as long as it continues to satisfy the elements of this definition.

(xii) *Typical year.* The term *typical year* means within the normal range of precipitation over a rolling thirty-year period for a particular geographic area.

(xiii) *Upland.* The term *upland* means any land area that under normal circumstances does not satisfy all three wetland delineation criteria (*i.e.,* hydrology, hydrophytic vegetation, hydric soils) identified in paragraph (l)(3)(xv) of this section, and does not lie below the ordinary high water mark or the high tide line of a water identified in paragraph (l)(1)(i) through (vi) of this section. Waters identified in paragraphs (l)(1)(i) through (vi) of this section are not upland.

(xiv) *Waste treatment system.* The term *waste treatment system* includes all components, including lagoons and treatment ponds (such as settling or cooling ponds), designed to convey or retain, concentrate, settle, reduce, or remove pollutants, either actively or passively, from wastewater prior to discharge (or eliminating any such discharge).

(xv) *Wetlands.* The term *wetlands* means areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

* * * * *

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Part III

Department of the Treasury

Office of the Comptroller of the Currency

Federal Reserve System

Federal Deposit Insurance Corporation

12 CFR Parts 1, 3, 5, et al.

Regulatory Capital Rule: Implementation and Transition of the Current Expected Credit Losses Methodology for Allowances and Related Adjustments to the Regulatory Capital Rule and Conforming Amendments to Other Regulations; Final Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 1, 3, 5, 23, 24, 32, and 46

[Docket ID OCC–2018–0009]

RIN 1557–AE32

FEDERAL RESERVE SYSTEM

12 CFR Parts 208, 211, 215, 217, 223, 225, and 252

[Regulation Q; Docket No. R–1605]

RIN 7100–AF04

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 324, 325, 327, 347, and 390

RIN 3064–AE74

Regulatory Capital Rule: Implementation and Transition of the Current Expected Credit Losses Methodology for Allowances and Related Adjustments to the Regulatory Capital Rule and Conforming Amendments to Other Regulations

AGENCY: Office of the Comptroller of the Currency, Treasury; the Board of Governors of the Federal Reserve System; and the Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation (collectively, the agencies) are adopting a final rule to address changes to credit loss accounting under U.S. generally accepted accounting principles, including banking organizations' implementation of the current expected credit losses methodology (CECL). The final rule provides banking organizations the option to phase in over a three-year period the day-one adverse effects on regulatory capital that may result from the adoption of the new accounting standard. In addition, the final rule revises the agencies' regulatory capital rule, stress testing rules, and regulatory disclosure requirements to reflect CECL, and makes conforming amendments to other regulations that reference credit loss allowances.

DATES: The final rule is effective on April 1, 2019. Banking organizations may early adopt this final rule prior to that date.

FOR FURTHER INFORMATION CONTACT:

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Board: Constance M. Horsley, Deputy Associate Director, (202) 452–5239; Juan C. Climent, Manager, (202) 872–7526; Andrew Willis, Senior Supervisory Financial Analyst, (202) 912–4323; or Noah Cuttler, Senior Financial Analyst, (202) 912–4678, Division of Supervision and Regulation; or Benjamin W. McDonough, Assistant General Counsel, (202) 452–2036; David W. Alexander, Counsel, (202) 452–2877; or Asad Kudiya, Counsel, (202) 475–6358, Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), (202) 263–4869.

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I. Overview

A. Background

On May 14, 2018, the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC) (collectively, the agencies) issued a notice of proposed rulemaking (NPR or proposal) that would have revised certain of their regulations to account for forthcoming changes to credit loss accounting under U.S. generally accepted accounting principles (U.S. GAAP).[1] In particular, the proposal would have amended certain of the agencies' rules to address the Financial Accounting Standards Board's (FASB) issuance of Accounting Standards Update No. 2016–13, Financial Instruments—Credit Losses, Topic 326, Measurement of Credit Losses on Financial Instruments (ASU 2016–13).[2] ASU 2016–13 introduces the current expected credit losses methodology (CECL), which replaces the incurred loss methodology for financial assets measured at amortized cost; introduces the term purchased credit deteriorated (PCD) assets, which replaces the term purchased credit-impaired (PCI) assets; and modifies the treatment of credit losses on available-for-sale (AFS) debt securities.

The proposal would have applied to banking organizations[3] that are subject

[1] 83 FR 22312 (May 14, 2018).

[2] ASU 2016–13 covers measurement of credit losses on financial instruments and includes three subtopics within Topic 326: (i) Subtopic 326–10 Financial Instruments—Credit Losses—Overall; (ii) Subtopic 326–20: Financial Instruments—Credit Losses—Measured at Amortized Cost; and (iii) Subtopic 326–30: Financial Instruments—Credit Losses—Available-for-Sale Debt Securities.

[3] Banking organizations subject to the capital rule include national banks, state member banks, state nonmember banks, savings associations, and top-tier bank holding companies and savings and loan holding companies domiciled in the United States not subject to the Board's Small Bank Holding Company Policy Statement (12 CFR part 225, Appendix C), but exclude certain savings and loan

to the agencies' regulatory capital rule[4] (capital rule), to banking organizations that are subject to stress testing requirements, and to banking organizations that file regulatory reports that are uniform and consistent with U.S. GAAP.[5] In particular, the proposal would have revised the agencies' capital rule to distinguish which credit loss allowances under the new accounting standard would be eligible for inclusion in a banking organization's regulatory capital. The proposal would also have provided banking organizations that experience a reduction in retained earnings as a result of adopting CECL with an option to elect a three-year transition period to phase in the effects of CECL adoption on regulatory capital. The proposal also would have revised regulatory capital disclosure requirements applicable to certain banking organizations, amended references to credit loss allowances in other regulations, and required the inclusion of CECL provisions in a banking organization's company-run stress testing projections beginning with the 2020 stress test cycle.

The agencies are adopting as final the proposal. The final rule is effective as of April 1, 2019, but a banking organization may choose to adopt the final rule starting as early as first quarter 2019.

B. Changes to U.S. GAAP

ASU 2016–13 revises U.S. GAAP and, consequently, affects regulatory reports based on U.S. GAAP. CECL differs from the incurred loss methodology in several key respects. First, for financial assets measured at amortized cost, CECL requires banking organizations to recognize lifetime expected credit losses, not just credit losses incurred as of the reporting date. CECL requires the incorporation of reasonable and supportable forecasts in developing an estimate of lifetime expected credit losses, while also maintaining the current requirement that banking organizations consider past events and current conditions. Furthermore, the probable threshold for recognition of allowances in accordance with the incurred loss methodology is removed under CECL. Taken together, estimating expected credit losses over the life of an asset under CECL, including consideration of reasonable and supportable forecasts but without applying the probable threshold that exists under the incurred loss methodology, results in earlier recognition of credit losses.

CECL replaces multiple impairment approaches in existing U.S. GAAP. CECL allowances will cover a broader range of financial assets than the allowance for loan and lease losses (ALLL) under the incurred loss methodology. Under the incurred loss methodology, ALLL generally covers credit losses on loans held for investment and lease financing receivables, with additional allowances for certain other extensions of credit and allowances for credit losses on certain off-balance sheet credit exposures (with the latter allowances presented as liabilities).[6] These exposures will be within the scope of CECL. In addition, CECL applies to credit losses on held-to-maturity (HTM) debt securities. As previously mentioned, ASU 2016–13 replaces the term PCI assets with the term PCD assets. The PCD asset definition covers a broader range of assets than the PCI asset definition. CECL requires banking organizations to estimate and record a credit loss allowance for a PCD asset at the time of purchase. This credit loss allowance is then added to the purchase price to determine the purchase date amortized cost basis of the asset for financial reporting purposes. Post-acquisition changes in credit loss allowances on PCD assets will be established through earnings. This is different from the current treatment of PCI assets, for which banking organizations are not permitted to estimate and recognize credit loss allowances at the time of purchase. Rather, banking organizations generally estimate credit loss allowances for PCI assets subsequent to the purchase only if there is deterioration in the expected cash flows from such assets.

ASU 2016–13 also introduces new requirements for AFS debt securities. The new accounting standard requires that a banking organization recognize credit losses on individual AFS debt securities through credit loss allowances, rather than through direct write-downs, as is currently required under U.S. GAAP. AFS debt securities will continue to be measured at fair value, with changes in fair value not related to credit losses recognized in other comprehensive income. Credit loss allowances on an AFS debt security are limited to the amount by which the security's fair value is less than its amortized cost.

Upon adoption of CECL, a banking organization will record a one-time adjustment to its credit loss allowances as of the beginning of its fiscal year of adoption equal to the difference, if any, between the amount of credit loss allowances required under the incurred loss methodology and the amount of credit loss allowances required under CECL. Except for PCD assets, banking organizations will recognize the adjustment to the credit loss allowances with offsetting entries to deferred tax assets (DTAs), if appropriate, and to the fiscal year's beginning retained earnings.

The effective date of ASU 2016–13 varies for different banking organizations. For banking organizations that are U.S. Securities and Exchange Commission (SEC) filers,[7] ASU 2016–13 will become effective for the first fiscal year beginning after December 15, 2019, including interim periods within that fiscal year. For banking organizations that are public business entities (PBE) but not SEC filers (as defined in U.S. GAAP),[8] ASU 2016–13 will become effective for the first fiscal year beginning after December 15, 2020, including interim periods within that

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.

[4] 12 CFR part 3 (OCC); 12 CFR part 217 (Board); 12 CFR part 324 (FDIC).

[5] *See* 12 U.S.C. 1831n; *see also* Instructions for Preparation of Consolidated Financial Statements for Holding Companies, Reporting Form FR Y–9C (Reissued March 2013); Instructions for Preparation of Consolidated Reports of Condition and Income, Reporting Forms FFIEC 031 and FFIEC 041 (updated September 2017); Instructions for Preparation of Consolidated Reports of Condition and Income for a Bank with Domestic Offices Only and Total Assets Less than $1 Billion, Reporting Form FFIEC 051 (updated September 2017).

[6] ''Other extensions of credit'' includes trade and reinsurance receivables, and receivables that relate to repurchase agreements and securities lending agreements. ''Off-balance sheet credit exposures'' includes off-balance sheet credit exposures not accounted for as insurance, such as loan commitments, standby letters of credit, and financial guarantees. The agencies note that credit losses for off-balance sheet credit exposures that are unconditionally cancellable by the issuer are not recognized under CECL.

[7] For this purpose, an SEC filer is an entity (*e.g.,* a bank holding company or savings and loan holding company) that is required to file its financial statements with the SEC under the federal securities laws or, for an insured depository institution, the appropriate federal banking agency under section 12(i) of the Securities Exchange Act of 1934. The banking agencies named under section 12(i) of the Securities Exchange Act of 1934 are the OCC, the Board, and the FDIC.

[8] A PBE that is not an SEC filer would include: (1) An entity that has issued securities that are traded, listed, or quoted on an over-the-counter market, and (2) an entity that has issued one or more securities that are not subject to contractual restrictions on transfer and is required by law, contract, or regulation to prepare U.S. GAAP financial statements (including footnotes) and make them publicly available periodically (*e.g.,* pursuant to Section 36 of the Federal Deposit Insurance Act and Part 363 of the FDIC's rules). For further information on the definition of a PBE, refer to ASU 2013–12, Definition of a Public Business Entity, issued in December 2013.

fiscal year. For banking organizations that are not PBEs (as defined in U.S. GAAP), ASU 2016–13 will become effective for the first fiscal year beginning after December 15, 2021, including interim periods within those fiscal years.[9] A banking organization that chooses to adopt ASU 2016–13 early may do so in a fiscal year beginning after December 15, 2018, including interim periods within that fiscal year. The following table provides a summary of the effective dates.

CECL EFFECTIVE DATES

	U.S. GAAP effective date	Regulatory report effective date *
PBEs that are SEC Filers	Fiscal years beginning after 12/15/2019, including interim periods within those fiscal years.	3/31/2020.
Other PBEs (Non-SEC Filers)	Fiscal years beginning after 12/15/2020, including interim periods within those fiscal years.	3/31/2021.
Non-PBEs	Fiscal years beginning after 12/15/2021, including interim periods within those fiscal years.	3/31/2022.
Early Adoption	Early adoption permitted for fiscal years beginning after 12/15/2018, including interim periods within those fiscal years.	3/31 of year of effective date of early adoption of ASU 2016–13.

* For institutions with calendar year-ends.

C. Regulatory Capital

A banking organization's implementation of CECL will likely affect its retained earnings, DTAs, and allowances and, as a result, its regulatory capital ratios. Retained earnings are a key component of a banking organization's common equity tier 1 (CET1) capital. An increase in a banking organization's allowances, including those estimated under CECL, generally will reduce the banking organization's earnings or retained earnings, and therefore its CET1 capital.[10] DTAs arising from temporary differences (temporary difference DTAs) must be included in a banking organization's risk-weighted assets or deducted from CET1 capital if they exceed certain thresholds. Increases in allowances generally give rise to increases in temporary difference DTAs that will partially offset the reduction in earnings or retained earnings.[11] Under the capital rule's standardized approach for risk-weighted assets (standardized approach), ALLL is included in a banking organization's tier 2 capital up to 1.25 percent of its standardized total risk-weighted assets (excluding standardized market risk-weighted assets, if applicable), as those terms are defined in the rule.[12] An advanced approaches banking organization[13] that has completed the parallel run process[14] includes in its advanced-approaches-adjusted total capital any eligible credit reserves that exceed the banking organization's total expected credit losses, as defined in the capital rule, to the extent that the excess reserve amount does not exceed 0.6 percent of the banking organization's credit risk-weighted assets.[15]

II. Summary of the Proposal

A. Proposed Revisions to the Capital Rule To Reflect the Change in U.S. GAAP

The agencies proposed to amend the capital rule to identify which credit loss allowances under the new accounting standard would be eligible for inclusion in a banking organization's regulatory capital.[16] In particular, the proposal would have added allowance for credit losses (ACL) as a newly defined term in the capital rule. As proposed, ACL would have included credit loss allowances related to financial assets measured at amortized cost, except for allowances for PCD assets. ACL would have been eligible for inclusion in a banking organization's tier 2 capital subject to the current limit for including ALLL in tier 2 capital under the capital rule's standardized approach.

Further, the agencies proposed to revise the capital rule, as applicable to an advanced approaches banking organization that has adopted CECL, and that has completed the parallel run process, to align the definition of eligible credit reserves with the definition of ACL in the proposal. The proposal would have retained the current limit for eligible credit reserves in tier 2 capital. The proposal also would have provided a separate capital treatment for allowances associated with AFS debt securities and PCD assets that would have applied to all banking organizations upon adoption of ASU 2016–13.

[9] The FASB amended the effective date to the periods indicated for non-PBEs through an ASU issued November 15, 2018, ASU No. 2018–19, Codification Improvements to Topic 326: Financial Instruments—Credit Losses. ASU 2016–13 will now take effect for non-PBEs for fiscal years beginning after December 15, 2021, including interim periods within those fiscal years. Thus, a non-PBE with a calendar year fiscal year must adopt ASU 2016–13 as of January 1, 2022, if the entity does not elect to early adopt prior to January 1, 2022, and would first report in accordance with the credit losses standard in its regulatory reports and any financial statements for March 31, 2022.

[10] However, allowances recognized on PCD assets upon adoption of CECL and upon later purchases of PCD assets generally would not reduce the banking organization's earnings, retained earnings, or CET1 capital.

[11] Deferred tax assets are a result of deductible temporary differences and carryforwards which may result in a decrease in taxes payable in future years.

[12] *See* 12 CFR 3.2 (OCC); 12 CFR 217.2 (Board); 12 CFR 324.2 (FDIC). Any amount of ALLL greater than the 1.25 percent limit is deducted from standardized total risk-weighted assets. 12 CFR 3.20(d)(3) (OCC); 12 CFR 217.20(d)(3) (Board); 12 CFR 324.20(d)(3) (FDIC).

[13] A banking organization is an advanced approaches banking organization if it has consolidated assets of at least $250 billion 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 (OCC); 12 CFR 217.100 (Board); 12 CFR 324.100 (FDIC). On October 31, 2018, the OCC and the Board issued a notice of proposed rulemaking that would modify the definition of an advanced approaches banking organization. On November 20, 2018, the FDIC issued a substantively identical notice of proposed rulemaking.

[14] An advanced approaches banking organization is considered to have completed the parallel run process once it has completed the advanced approaches qualification process and received notification from its primary federal regulator pursuant to section 121(d) of subpart E of the capital rule. *See* 12 CFR 3.121(d) (OCC); 12 CFR 217.121(d) (Board); 12 CFR 324.121(d) (FDIC).

[15] 12 CFR 3.10(c)(3)(ii) (OCC); 12 CFR 217.10(c)(3)(ii) (Board); and 12 CFR 324.10(c)(3)(ii) (FDIC).

[16] Note that under section 37 of the Federal Deposit Insurance Act, the accounting principles applicable to reports or statements required to be filed with the agencies by all insured depository institutions must be uniform and consistent with U.S. GAAP. *See* 12 U.S.C. 1831n(a)(2)(A). Consistency in reporting under the statute would be addressed by the agencies' proposed CECL revisions to the Call Report pursuant to the Paperwork Reduction Act. *See* 83 FR 49160 (September 28, 2018).

Before the agencies issued the proposal, some banking organizations expressed concerns about the difficulty in capital planning due to the uncertainty about the economic environment at the time of CECL adoption. This is largely because CECL requires banking organizations to consider current and future expected economic conditions to estimate allowances and these conditions will not be known until closer to a banking organization's CECL adoption date. Therefore, it is possible that despite adequate capital planning, uncertainty about the economic environment at the time of CECL adoption could result in higher-than-anticipated increases in credit loss allowances. To address these concerns, the agencies proposed to provide a banking organization with the option to phase in over a three-year period the day-one adverse effects of CECL on the banking organization's regulatory capital ratios.

The proposal also would have revised regulatory capital disclosure requirements [17] that would have applied to certain banking organizations following their adoption of CECL.[18] The proposal would have provided conforming amendments to the agencies' other regulations that refer to credit loss allowances to reflect the implementation of ASU 2016–13. In particular, the proposal would have amended the Board's and FDIC's company-run stress testing rules to require a banking organization that has adopted CECL to include its CECL provisions as part of its stress testing projections beginning with the 2020 stress test cycle.

Finally, the proposal would not have changed the limit of 1.25 percent of risk-weighted assets governing the amount of allowances eligible for inclusion in tier 2 capital. The agencies stated in the proposal that they would intend to monitor the effects of this limit on regulatory capital and bank lending practices. This ongoing monitoring would have included the review of data, including data provided by banking organizations, and would have assisted the agencies in determining whether any further change to the capital rule's treatment of ACL might be warranted in the future.

[17] For the agencies' proposed revisions to regulatory reports to address the revised accounting for credit losses under ASU 2016–13, including CECL, see 83 FR 49160 (September 28, 2018).

[18] For certain banking organizations, sections 63 and 173 of the capital rule requires disclosure of items such as capital structure, capital adequacy, credit risk, and credit risk mitigation.

B. Summary of Comments Received on the Proposal

The agencies received 25 comment letters from banking organizations, trade associations, public interest groups, and individuals. Most commenters supported the agencies' proposal to provide an option to elect temporary regulatory capital relief as banking organizations adopt CECL. Most commenters also requested further additional measures for addressing CECL's effect on regulatory capital. Many commenters supported the agencies' proposal to provide a three-year transition provision to phase-in CECL's day-one effect on a banking organization's regulatory capital ratios, with most of these commenters favoring a longer five-year transition period. Some commenters offered targeted recommendations regarding implementation of a transition provision that would phase in CECL's effect in periods after CECL's day-one implementation. Several commenters requested that, instead of a transition provision, the agencies should provide a temporary neutralization adjustment of CET1 capital while further consideration of the effect of CECL is undertaken. Many of these and other commenters asserted that any transitional provision would be inadequate and preferred neutralizing the effect of CECL on regulatory capital ratios by either adjusting the CET1 capital calculation or revising the overall capital requirements.

One commenter requested that the agencies expand the scope of credit loss allowances eligible for inclusion in a banking organization's tier 2 capital to permit banking organizations to include post-acquisition allowances for PCD assets when PCD assets exceed a materiality threshold. Some commenters requested that the agencies increase or remove the current limit on allowances includable in tier 2 capital. Several commenters raised concerns with the proposed schedule for incorporation of CECL provisions into the stress testing cycle. One commenter requested that CECL's implementation in the stress testing cycle align with the proposal's three-year transition provision to allow time for industry standard practices to converge. Other commenters raised concerns and requested guidance in connection with how CECL interacts with regulatory capital and stress testing. Many of these commenters requested that the agencies undertake additional ''cost-benefit'' and impact studies to assess CECL's effect on the regulatory capital of banking organizations of various sizes and under varying economic conditions over time. Numerous commenters urged the agencies to delay CECL's implementation until additional impact studies have been completed, and to intervene on commenters' behalf with the FASB to revise the accounting treatment of credit losses.

III. Final Rule

A. Changes to the Capital Rule To Reflect the Change in U.S. GAAP

1. Introduction of Adjusted Allowances for Credit Losses as a New Defined Term

The agencies are adopting as final the proposal for the credit loss allowances that would have been eligible for inclusion in tier 2 capital, with one non-substantive change from the proposal with respect to terminology. The final rule includes a new term, adjusted allowances for credit losses (AACL), which replaces the term ACL, as used in the proposal. The agencies believe that the term AACL for regulatory capital purposes minimizes confusion, as its meaning is different from the term ACL used in applicable accounting standards. The term allowance for credit losses as used by the FASB in ASU 2016–13 applies to both financial assets and AFS debt securities. In contrast, the term ACL as used in the proposal for regulatory capital purposes excludes credit loss allowances on PCD assets and AFS debt securities. Consistent with the proposal and as described in the following sections, the AACL definition includes only those allowances that have been charged against earnings or retained earnings. Under the final rule, the term AACL, rather than ALLL, will apply to a banking organization that has adopted CECL. Consistent with the treatment of ALLL under the capital rule's standardized approach, amounts of AACL are eligible for inclusion in a banking organization's tier 2 capital up to 1.25 percent of the banking organization's standardized total risk-weighted assets (excluding its standardized market risk-weighted assets, if applicable).

AACL covers a broader range of financial assets than ALLL under the incurred loss methodology. Under the standardized approach of the capital rule, ALLL includes valuation allowances that have been established through a charge against earnings to cover estimated credit losses on loans or other extensions of credit as determined in accordance with U.S. GAAP. Under CECL, credit loss allowances represent an accounting valuation account, measured as the difference between the financial assets' amortized cost basis

and the amount expected to be collected on the financial assets (*i.e.,* lifetime credit losses). Thus, AACL includes allowances for expected credit losses on HTM debt securities and lessors' net investments in leases that have been established to adjust these assets to amounts expected to be collected, as determined in accordance with U.S. GAAP. AACL also includes allowances for expected credit losses on off-balance sheet credit exposures not accounted for as insurance, as determined in accordance with U.S. GAAP. As described below, however, credit loss allowances related to AFS debt securities and PCD assets are not included in the definition of AACL. As with the definition of ALLL, AACL under the final rule also excludes allocated transfer risk reserves.

2. Definition of Carrying Value

The agencies are adopting as final, without change from the proposal, the definition of carrying value. Under the final rule, carrying value means, with respect to an asset, the value of the asset on the balance sheet as determined in accordance with U.S. GAAP. Furthermore, carrying value under the final rule provides that, for all assets other than AFS debt securities and PCD assets, the carrying value is not reduced by any associated credit loss allowance. The agencies did not receive comments on the proposed treatment of AFS debt securities and, as discussed below, received one comment on the proposed treatment of PCD assets.

Current accounting standards require a banking organization to make an individual assessment of each of its AFS debt securities and take a direct write-down for credit losses when such a security is other-than-temporarily impaired. The amount of the write-down is charged against earnings, which reduces CET1 capital and results in a reduction in the same amount to the carrying value of the AFS debt security. ASU 2016–13 revises the accounting for credit impairment of AFS debt securities by requiring banking organizations to determine whether a decline in fair value below an AFS debt security's amortized cost resulted from a credit loss, and to record any such credit impairment through earnings with a corresponding allowance. Similar to the current regulatory treatment of credit-related losses for other-than-temporary impairment, under the final rule all credit losses recognized on AFS debt securities will correspondingly affect CET1 capital and reduce the carrying value of the AFS debt security. Since the carrying value of an AFS debt security is its fair value, which would reflect any credit impairment, credit loss allowances for AFS debt securities required under the new accounting standard are not eligible for inclusion in a banking organization's tier 2 capital.

Under the new accounting standard, PCD assets are acquired individual financial assets (or acquired groups of financial assets with shared risk characteristics) that, as of the date of acquisition and as determined by an acquirer's assessment, have experienced a more-than-insignificant deterioration in credit quality since origination. The new accounting standard will require a banking organization to estimate expected credit losses that are embedded in the purchase price of a PCD asset and recognize these amounts as an allowance as of the date of acquisition. As such, the initial allowance amount for a PCD asset recorded on a banking organization's balance sheet will not be established through a charge to earnings. Including in tier 2 capital allowances that have not been charged against earnings would diminish the quality of regulatory capital. Post-acquisition increases in allowances for PCD assets will be established through a charge against earnings.

Accordingly, the agencies are maintaining the requirement that valuation allowances be fully charged against earnings in order to be eligible for inclusion in tier 2 capital. The agencies also are clarifying that valuation allowances that are charged to retained earnings in accordance with U.S. GAAP (*i.e.,* the allowances required at CECL adoption) are eligible for inclusion in tier 2 capital. The final rule, however, excludes PCD allowances from being included in tier 2 capital; rather, a banking organization calculates the carrying value of PCD assets net of allowances. This treatment of PCD assets, in effect, will reduce a banking organization's standardized total risk-weighted assets, similar to the proposed treatment for credit loss allowances for AFS debt securities. One commenter recommended that the agencies require or provide an option to allow banking organizations to use a bifurcated approach for the treatment of PCD assets whereby a banking organization could include post-acquisition allowances on PCD assets in tier 2 capital when the banking organization's PCD balances exceed a materiality threshold. The commenter was concerned that the proposed approach could discourage banking organizations from acquiring distressed firms if the post-acquisition allowance were not includable in regulatory capital. As noted in the proposal, the agencies are concerned that a bifurcated approach could create undue complexity and burden for banking organizations and believe that requiring banking organizations to calculate the carrying value of PCD assets net of allowances appropriately accounts for post-acquisition allowances in the calculation of regulatory capital.

B. CECL Transition Provision

In the preamble of the proposal, the agencies noted that some banking organizations have expressed concerns about the difficulty in capital planning due to the uncertainty about the economic environment at the time of CECL adoption. This is largely because CECL requires banking organizations to consider current and future expected economic conditions to estimate allowances and banking organizations will not understand these conditions until closer to their CECL adoption date. Therefore, it is possible that despite adequate planning to prepare for the implementation of CECL, unexpected economic conditions at the time of CECL adoption could result in higher-than-anticipated increases in allowances. To address these concerns, the agencies proposed to provide banking organizations with the option to phase in over a three-year period the day-one adverse effects of CECL on their regulatory capital ratios.

Several commenters requested that the agencies extend the transition period from three years to five years or longer. In particular, commenters noted that effects of CECL on bank capital in the aggregate and for individual banks cannot be precisely estimated prior to actual adoption of CECL. Some commenters noted that a five-year transition would help to soften any adverse effects due to unresolved interpretive issues with respect to CECL implementation. According to one commenter, a five-year transition period would allow a bank to transition through the vast majority of the expected life of its loan portfolio. One commenter argued that a three-year transition period might not be sufficient for firms that enter a stress environment at the time of CECL implementation. One commenter supported the proposed three-year transition period.

A few commenters asked the agencies to adopt a dynamic transition provision, whereby a banking organization could calculate and phase-in additional capital differences between CECL and the current incurred loss methodology (or a proxy for the incurred loss methodology) for any new credit loss allowances generated throughout the entire transition period, rather than just at initial adoption of CECL. Several

commenters requested that the agencies delay the implementation of CECL or neutralize the impact of CECL on regulatory capital until further study of the effect of CECL has been completed.

The agencies note that ASU 2016–13 was issued in 2016 and becomes mandatory in 2020 at the earliest for banking organizations that are U.S. SEC filers, which provides banking organizations with at least a four year period to plan for CECL implementation. Most banking organizations are not required to adopt CECL until 2021 or 2022, according to the U.S. GAAP effective dates for ASU 2016–13.

While the exact effects of CECL adoption may not be known currently, a banking organization will be able to better understand and estimate the macroeconomic factors that may affect the size of the banking organization's one-time adjustment to CECL closer to its CECL adoption date. The agencies recognize that these estimates may change, and the three-year transition period may help mitigate capital volatility due to refinements in CECL allowance estimates that may be made as a banking organization approaches its CECL adoption date.

The agencies continue to view the period of at least four years that banking organizations will have had to plan for the implementation of CECL, combined with the proposed three-year transition period, as a sufficient amount of time for a banking organization to adjust and adapt to any immediate adverse effects on regulatory capital ratios resulting from CECL adoption. Further, the agencies considered adopting a dynamic or ongoing transition approach, but believe, that relative to the straight-line approach, it would create unnecessary complexity and operational burden. Therefore, the agencies are finalizing the three-year transition period as proposed.

As previously stated, many commenters requested that the agencies take action to ''neutralize'' the effect of CECL on regulatory capital on a more permanent basis. The agencies acknowledge that because changes in allowances may reduce retained earnings, which is a key component of CET1 capital, CECL implementation could affect regulatory capital levels at some banking organizations. In defining regulatory capital, the agencies have long sought to recognize the ability of capital to absorb losses and to support the ongoing operations of a banking organization. The agencies recognize commenters' concerns with CECL and intend to closely monitor the effects of CECL on regulatory capital and bank lending practices as the standard is implemented.

1. Election of the Optional CECL Transition Provision

Under the final rule, a banking organization that experiences a reduction in retained earnings due to CECL adoption as of the beginning of the fiscal year in which the banking organization adopts CECL may elect to phase in the regulatory capital impact of adopting CECL over a three-year transition period (electing banking organization). An electing banking organization is required to begin applying the CECL transition provision as of the electing banking organization's CECL adoption date. An electing banking organization must indicate in its Consolidated Reports of Condition and Income (Call Report) or Form FR Y–9C, as applicable, its election to use the CECL transition provision, by reporting the amounts in the affected line items of the regulatory capital schedule, adjusted for the transition provisions, beginning in the regulatory report for the quarter in which it first reports its credit loss allowances as measured under CECL. For example, an electing banking organization would adjust the amount of retained earnings it reports in Schedule RC–R of the Call Report or Schedule HC–R of the Form FR Y–9C to incorporate the transition provision.

A banking organization that does not elect to use the CECL transition provision in the regulatory report for the quarter in which it first reports its credit loss allowances as measured under CECL will not be permitted to make an election in subsequent reporting periods and will be required to reflect the full effect of CECL in its regulatory capital ratios beginning as of the banking organization's CECL adoption date. For example, a banking organization that adopts CECL as of January 1, 2020, and does not elect to use the CECL transition provision in its regulatory report as of March 31, 2020, must include the full effects of CECL adoption in its regulatory capital schedule as of March 31, 2020, and will not be permitted to use the CECL transition provision in any subsequent reporting period.

A banking organization that initially elects to use the CECL transition provision in the final rule, but opts out of the transition provision in a subsequent reporting period, will not be permitted to resume using the transition provision at a later date within the three-year transition period. A banking organization may opt out of applying the transition provision by reflecting the full impact of CECL on regulatory capital in Schedule RC–R of the Call Report or Schedule HC–R of Form FR Y–9C, as applicable.

A depository institution holding company subject to the Board's capital rule and each of its subsidiary institutions is eligible to make a CECL transition provision election independent of one another.

2. Mechanics of the CECL Transition Provision

Under the final rule, an electing banking organization must calculate transitional amounts for the following items: Retained earnings, temporary difference DTAs, and credit loss allowances eligible for inclusion in regulatory capital. For each of these items, the transitional amount is equal to the difference between the electing banking organization's closing balance sheet amount for the fiscal year-end immediately prior to its adoption of CECL (pre-CECL amount) and its balance sheet amount as of the beginning of the fiscal year in which it adopts CECL (post-CECL amount). An electing banking organization must phase in the transitional amounts to its regulatory capital calculations over a three-year period beginning the first day of the fiscal year in which the electing banking organization adopts CECL.

An electing banking organization's ''CECL transitional amount'' is equal to the difference between its pre-CECL and post-CECL amounts of retained earnings (CECL transitional amount). An electing banking organization's ''DTA transitional amount'' is equal to the difference between its pre-CECL and post-CECL amounts of temporary difference DTAs. An electing banking organization's AACL transitional amount is equal to the difference between its pre-CECL amount of ALLL and its post-CECL amount of AACL (AACL transitional amount).

Under the standardized approach, an electing banking organization must phase in over the three-year transition period its CECL transitional amount, DTA transitional amount, and AACL transitional amount. The electing banking organization also must phase in over the transition period the CECL transitional amount to its average total consolidated assets for purposes of calculating its tier 1 leverage ratio. Each transitional amount must be phased in over the transition period on a straight-line basis.

When calculating regulatory capital ratios during the first year of an electing banking organization's CECL adoption date, the organization must phase in 25 percent of the transitional amounts. The electing banking organization would

phase in an additional 25 percent of the transitional amounts over each of the next two years so that a banking organization would have phased in 75 percent of the day-one adverse effects of adopting CECL during year three. At the beginning of the fourth year, the banking organization would have completely reflected in regulatory capital the day-one effects of CECL. See Table 1 below for further details:

TABLE 1—CECL TRANSITION AMOUNTS TO APPLY TO REGULATORY CAPITAL COMPONENTS

	Year 1	Year 2	Year 3
Increase retained earnings and average total consolidated assets by the following percentages of the CECL transitional amount Decrease temporary difference DTAs by the following percentages of the DTA transitional amount. Decrease AACL by the following percentages of the AACL transitional amount.	75%	50%	25%

For example, consider a hypothetical electing banking organization that has a CECL effective date of January 1, 2020, and a 21 percent tax rate. On the closing balance sheet date immediately prior to adopting CECL (*i.e.,* December 31, 2019), the electing banking organization has $10 million in retained earnings and $1 million of ALLL. On the opening balance sheet date immediately after adopting CECL (*i.e.,* January 1, 2020), the electing banking organization has $1.2 million of AACL. The electing banking organization would recognize the adoption of CECL by recording an increase to AACL (credit) of $200,000, with an offsetting increase in temporary difference DTAs of $42,000 (debit), and a reduction in beginning retained earnings of $158,000 (debit). For each of the quarterly reporting periods in year 1 of the transition period (*i.e.,* 2020), the electing banking organization would increase both retained earnings and average total consolidated assets by $118,500 ($158,000 × 75 percent), decrease temporary difference DTAs by $31,500 ($42,000 × 75 percent), and decrease AACL by $150,000 ($200,000 × 75 percent) for purposes of calculating its regulatory capital ratios. The remainder of the transitional amounts will be transitioned into regulatory capital according to the schedule provided in Table 2.

TABLE 2—EXAMPLE OF A CECL TRANSITION PROVISION SCHEDULE

In thousands	Transitional amounts	Transitional amounts applicable during each year of the transition period		
	Column A	Column B	Column C	Column D
		Year 1 at 75%	Year 2 at 50%	Year 3 at 25%
Increase retained earnings and average total consolidated assets by the CECL transitional amount	$158	$118.50	$79	$39.50
Decrease temporary difference DTAs by the DTA transitional amount	42	31.50	21	10.50
Decrease AACL by the ACL transitional amount	200	150	100	50

The result of the CECL transition provision for an electing banking organization is to phase in the effect of the adoption of CECL in its regulatory capital ratios in a uniform manner. The phase-in of the CECL transitional amount to retained earnings will mitigate the decrease in an electing banking organization's CET1 capital resulting from CECL adoption, and would increase the levels at which the capital rule's CET1 capital deduction thresholds would be triggered. The DTA transitional amount phases in the amount of an electing banking organization's temporary difference DTAs subject to the CET1 capital deduction thresholds and the amount of temporary difference DTAs included in risk-weighted assets. The AACL transitional amount phases in the amount of AACL that an electing banking organization may include in its tier 2 capital up to the limit of 1.25 percent of its standardized total risk-weighted assets (excluding its standardized market risk-weighted assets, if applicable). Finally, for purposes of an electing banking organization's tier 1 leverage ratio calculation, the addition of the CECL transitional amount to average total consolidated assets offsets the immediate decrease that would otherwise occur as a result of the adjustments to credit loss allowances and temporary difference DTAs resulting from the adoption of CECL.

Notwithstanding the CECL transition provision, all other aspects of the capital rule will continue to apply. Thus, all regulatory capital adjustments and deductions will continue to apply and an electing banking organization will continue to be limited in the amount of credit loss allowances that it could include in its tier 2 capital.[19]

[19] 12 CFR 3.10(c)(3)(ii)(B), 12 CFR 3.20(d)(3) (OCC); 12 CFR 217.10(c)(3)(ii)(B), 12 CFR 217.20(d)(3) (Board); 12 CFR 324.10(c)(3)(ii)(B), 12 CFR 324.20(d)(3) (FDIC).

3. Business Combinations

Under the proposal, during the period in which an electing banking organization is using the CECL transition provision, if the electing banking organization acquired another banking organization through a business combination (as determined under U.S. GAAP), the electing banking organization would have been able to continue to make use of its transitional amounts based on its calculation as of the date of its adoption of CECL. Business combinations would have covered mergers, acquisitions, and transactions in which two existing unrelated entities combine into a newly created third entity.

One commenter requested that the agencies allow transitional amounts of an acquired electing banking organization to flow through to the resulting banking organization. The agencies do not believe that such a treatment is appropriate, as any assets acquired and liabilities assumed will be

measured at fair value as of the acquisition date under U.S. GAAP, and therefore the capital relief is no longer relevant for the acquired banking organizations. Thus, under the final rule, any transitional amounts of an acquired electing banking organization will not be eligible for inclusion in the calculation of the regulatory capital ratios of the resulting banking organization.[20]

4. Supervisory Oversight

For purposes of determining whether an electing banking organization is in compliance with its regulatory capital requirements (including capital buffer and prompt corrective action (PCA) requirements), the agencies will use the electing banking organization's regulatory capital ratios as adjusted by the CECL transition provision. Through the supervisory process, the agencies will continue to examine banking organizations' credit loss estimates and allowance balances regardless of whether the banking organization has elected to use the CECL transition provision. In addition, the agencies may examine whether electing banking organizations will have adequate amounts of capital at the expiration of their CECL transition provision period.

C. Additional Requirements for Advanced Approaches Banking Organizations

Under the capital rule, an advanced approaches banking organization[21] that has completed the parallel run process must include in its advanced-approaches-adjusted total capital any amount of eligible credit reserves that exceeds its regulatory expected credit losses to the extent that the excess reserve amount does not exceed 0.6 percent of the banking organization's credit risk-weighted assets.[22] Consistent with the proposal, the agencies are revising the definition of eligible credit reserves to align with the definition of AACL in the final rule. Under the final rule, for an advanced approaches banking organization that has completed the parallel run process and that has adopted CECL, eligible credit reserves includes all general allowances that have been established through a charge against earnings or retained earnings to cover expected credit losses associated with on- or off-balance sheet wholesale and retail exposures, including AACL associated with such exposures. Similar to the current definition of eligible credit reserves, the definition of eligible credit reserves applicable to banking organizations that have adopted CECL excludes allocated transfer risk reserves established pursuant to 12 U.S.C. 3904. In addition, the revised eligible credit reserves definition excludes expected credit losses on PCD assets and expected credit losses on AFS debt securities, and other specific reserves created against recognized losses. The definition of eligible credit reserves remains unchanged for an advanced approaches banking organization that has not adopted CECL.

For purposes of the supplementary leverage ratio (SLR), which is applicable to all advanced approaches banking organizations, the final rule maintains the current definition of total leverage exposure. Thus, total leverage exposure continues to include, among other items, the balance sheet carrying value of such a banking organization's on-balance sheet assets less amounts deducted from tier 1 capital.

TABLE 3—CECL TRANSITION AMOUNTS FOR ADVANCED APPROACHES BANKING ORGANIZATIONS

	Year 1	Year 2	Year 3
Increase total leverage exposure for SLR by the following percentages of the CECL transitional amount	75%	50%	25%
Decrease eligible credit reserves by the following percentages of the eligible credit reserves transitional amount.			

An advanced approaches banking organization that has completed the parallel run process is required to deduct the amount of expected credit losses that exceeds its eligible credit reserves (ECR shortfall) from its CET1 capital. Due to this requirement, an advanced approaches banking organization's CET1 capital immediately after CECL adoption may be greater than its CET1 capital immediately before CECL adoption.[23] This is because, for a banking organization with an ECR shortfall, an increase in allowances resulting from CECL adoption can have a dual impact on CET1 capital: (1) A reduction in retained earnings (partially offset by DTAs) that may be less than (2) a concurrent reduction in the ECR shortfall amount because while the CET1 capital reduction is net of DTAs, the reduction in ECR shortfall is not net of DTAs. The agencies were concerned that the use of the CECL transition provision could provide an undue benefit to a banking organization that has an ECR shortfall prior to its adoption of CECL and could undermine an objective of the CECL transition provision to provide relief to banking organizations that experience an immediate adverse impact to regulatory capital as a result of CECL adoption. The agencies received one comment that supported this aspect of the proposal, for the stated reasons above. The final rule, therefore, limits the CECL transitional amount that such an electing advanced approaches banking organization can include in retained earnings.

Under the final rule and consistent with the proposal, an electing advanced approaches banking organization that (1) has completed the parallel run process, (2) has an ECR shortfall immediately prior to the adoption of CECL, and (3) would have an increase in CET1 capital as of the beginning of the fiscal year in which it adopts CECL after including the first year portion of the CECL transitional amount, is required to decrease its CECL transitional amount by its DTA transitional amount.[24]

[20] For combinations of banking organizations under common control the transitional amounts of each banking organization could be combined in the calculation of the regulatory capital ratios of the resulting banking organization.

[21] *See* footnote 13.

[22] 12 CFR 3.10(c)(3)(ii) (OCC); 12 CFR 217.10(c)(3)(ii) (Board); and 12 CFR 324.10(c)(3)(ii) (FDIC).

[23] *See* 12 CFR 3.121(d) (OCC); 12 CFR 217.121(d) (Board); and 12 CFR 324.121(d) (FDIC).

[24] For example, if a banking organization has completed the parallel run process, has an ECR shortfall immediately prior to the adoption of CECL, would have an increase in CET1 capital as of the beginning of the fiscal year in which it adopts CECL after including the first year portion of the CECL transitional amount, and, upon the adoption of CECL, records an increase in AACL (credit) of $200,000, with an offsetting increase in temporary difference DTAs of $42,000 (debit), and a reduction in beginning retained earnings of $158,000 (debit), then that banking organization would have a CECL transitional amount of $116,000 ($158,000 − $42,000), and would apply $87,000 in year 1, $58,000 in year 2, $29,000 in year 3 of the transition period.

D. Disclosures and Regulatory Reporting

One commenter urged the agencies to consider requiring banking organizations to disclose the full effect of CECL. The agencies recognize that increased disclosures help to provide users of financial reports with additional information, but doing so can increase burden for banking organizations. The agencies have proposed revisions to certain regulatory reporting forms to reflect the changes in U.S. GAAP provided by ASU 2016–13 in a separate proposal.[25] The proposed revisions would specify how electing banking organizations report their transitional amounts for the affected line items in Schedule RC–R of the Call Report and Schedule HC–R of the FR Y–9C.[26] In addition, the agencies intend to update instructions for certain other reporting forms, including the FFIEC 101, to reflect the three-year CECL transition period.

In addition, under the final rule, banking organizations subject to the disclosure requirements in section 63 of the capital rule (*i.e.,* banking organizations with total consolidated assets of $50 billion or more) would be required to update their disclosures to reflect the adoption of CECL. Such banking organizations would be required to disclose AACL instead of ALLL after CECL adoption.

For advanced approaches banking organizations, the final rule makes similar revisions to Tables 2, 3, and 5 in section 173 [27] of the capital rule to reflect the adoption of CECL. In addition, the final rule revises those tables requiring electing advanced approaches banking organizations to disclose two sets of regulatory capital ratios. One set would reflect the banking organization's capital ratios with the CECL transition provision and the other set would reflect the banking organization's capital ratios on a fully phased-in basis.

E. Conforming Changes to Other Agency Regulations

1. OCC Regulations

In addition to the capital rule, seven provisions in other OCC regulations refer to ALLL, as defined in 12 CFR part 3, in calculating various statutory or regulatory limits. Specifically, ALLL is used in calculating limits on holdings of certain investment securities (12 CFR part 1); limits on ownership of bankers' bank stock (12 CFR 5.20); limits on investments in bank premises (12 CFR 5.37); limits on leasing of personal property (12 CFR 23.4); limits on certain community development investments (12 CFR 24.4); lending limits (12 CFR part 32); and, limits on improvements to other real estate owned (12 CFR part 34, subpart E).

The OCC has revised the calculations used in six of those sections that currently reference ALLL to reference AACL, once a banking organization has adopted the FASB standard. The revisions ensure that banking organizations will not experience a material decrease in any of the affected limits due to the adoption of CECL. With respect to limits on improvements to other real estate owned in 12 CFR part 34, subpart E, the OCC is withdrawing the proposed revision in anticipation of making comprehensive revisions to that subpart in the near future.

The OCC also made conforming edits to the terminology used in the stress testing regulation at 12 CFR part 46 to incorporate the new CECL methodology. Some commenters requested that the OCC mirror the Board and FDIC in adopting detailed CECL-specific provisions and effective dates in part 46. The OCC currently addresses these details through instructions to the stress tests and will continue to do so through amending the instructions instead of through rulemaking.

2. Board Regulations

Certain Board regulations reflect the current practice of banking organizations establishing an ALLL under the incurred loss methodology to cover estimated credit losses on loans, lease financing receivables, or other extensions of credit. As discussed above, banking organizations that adopt CECL will hold AACL to cover expected credit losses on a broader array of financial assets than covered by the ALLL. As a result, the final rule makes conforming changes to those other regulations.

Specifically, the final rule amends the definition of ''capital stock and surplus'' in the Board's Regulation H, 12 CFR part 208, to include the balance of a member bank's AACL. Similarly, the final rule incorporates ''allowance for credit losses'' in the definition of ''capital stock and surplus'' in the Board's Regulation K, 12 CFR part 211; Regulation W, 12 CFR part 223; and Regulation Y, 12 CFR part 225. A related change will be made to the definition of unimpaired capital and unimpaired surplus in the Board's Regulation O, 12 CFR part 215.

The final rule makes a similar change to the Board's Regulation K relating to the establishment of allocated transfer risk reserve (ATRR). Specifically, the final rule replaces, for CECL adopters, all references to ALLL, in the section relating to the accounting treatment of ATRR, with AACL.

The final rule incorporates technical amendments to section 225.127 of the Board's Regulation Y to provide corrected reference citations to sections of Regulation Y that have been revised and renumbered.

Finally, the final rule amends the supervisory stress testing and company-run stress testing rules in the Board's Regulation YY, 12 CFR part 252, to address the changes made in U.S. GAAP following the issuance of ASU 2016–13.[28] Several commenters requested that the Board delay incorporation of CECL into the Comprehensive Capital Analysis and Review (CCAR) given CECL's operational and governance challenges. In particular, some commenters requested a delay for incorporating CECL until the 2021 stress testing cycle, while one commenter requested a delay until the year following a banking organization's adoption of CECL and another commenter requested a delay until an industry standard practice regarding incorporating CECL into CCAR emerges. One commenter requested that the Board phase in CECL into CCAR over three years, consistent with the proposed transition provision.

The Board notes that the proposal did not address the incorporation of CECL into CCAR and instead addressed the incorporation of CECL into the Board's stress testing rules. As a result, the Board is addressing the comments in the context of incorporation of CECL in its stress testing rules. While CCAR and the capital plan rule are outside of the scope of this rulemaking, the Board is carefully considering the effect of CECL on key aspects of CCAR, including its assessment of a firm's post-stress capital

[25] 83 FR 49160 (September 28, 2018).

[26] On November 20, 2018, the agencies issued a notice of proposed rulemaking to implement Section 201 of the Economic Growth, Regulatory Relief, and Consumer Protection Act. Under the proposal, depository institutions and depository institution holding companies that have less than $10 billion in total consolidated assets, meet risk-based qualifying criteria, and have a community bank leverage ratio (as defined in the proposal) of greater than 9 percent would be eligible to opt into a community bank leverage ratio (CBLR) framework. Banking organizations that use the CBLR framework would no longer be required to complete the current Schedule RC–R of the Call Report or Schedule HC–R of the FR Y–9C, as applicable. The agencies anticipate issuing for public comment a proposed alternative capital reporting schedule for such banking organizations.

[27] 12 CFR 3.173 (OCC); 12 CFR 217.173 (Board); 12 CFR 324.173 (FDIC).

[28] *See* 12 CFR part 252, subparts B, E, and F.

adequacy and its supervision of a firm's internal capital planning practices. The Board will look to provide more information on the intersection of CECL and CCAR.

The Board acknowledges that incorporating CECL on a forward-looking basis in the Board's supervisory stress testing and company-run stress testing rules involves additional challenges apart from those involved in financial reporting. However, in order to address the purpose of the stress testing rules—to assess whether banking organizations have sufficient capital to absorb losses as a result of adverse economic conditions—the Board expects that banking organizations implementing CECL for financial reporting will also reflect CECL in their stress testing processes starting in the same year. Otherwise, stress test projections may not reflect how the banking organizations' balance sheets and regulatory capital ratios would evolve during stressful conditions. The Board also believes an extended phase-in of CECL into the stress test rules would introduce undue complexity in the requirements. Such a transition would require estimating regulatory capital ratios under both the incurred loss method and CECL for three annual stress testing exercises.

For these reasons, the Board is finalizing the initial application of CECL in stress testing as proposed. As such, under the final rule, a banking organization that has adopted CECL will be required to include its provision for credit losses beginning in the 2020 stress test cycle, which would include provisions calculated under ASU 2016–13, instead of its provision for loan and lease losses, in its stress testing methodologies and data and information required to be submitted to the Board and that the disclosure of the results of those stress tests includes estimates of those provisions. To promote comparability of stress test results across firms, for the 2018 and 2019 stress test cycles, a banking organization will continue to use its provision for loan and lease losses, as would be calculated under the incurred loss methodology, even if the firm adopts CECL in 2019. Finally, under the final rule, a banking organization that does not adopt CECL until 2021 will not be required to include its provision for credit losses for these purposes until the 2021 stress test cycle. The following table describes the stress test cycles in which a banking organization will be required to use its provision for credit losses instead of the provision for loan and lease losses, based on the varying dates of adoption of ASU 2016–13.

TABLE 4—SUMMARY OF USE OF PROVISIONS IN 2019–2021 STRESS TEST CYCLES

Year of adoption of ASU 2016–13	2019 Stress test cycle	2020 Stress test cycle	2021 Stress test cycle
2019	Provision for loan and lease losses	Provision for credit losses	Provision for credit losses.
2020	Provision for loan and lease losses	Provision for credit losses	Provision for credit losses.
2021	Provision for loan and lease losses	Provision for loan and lease losses	Provision for credit losses.

In addition, beginning in the 2020 stress test cycle, a banking organization that has adopted CECL will be required under the final rule to incorporate the effects of the maintenance of AACL when estimating the impact on pro forma regulatory capital levels and pro forma capital ratios.

3. FDIC Regulations

The final rule makes conforming amendments to references to provisions or allowances for loan and lease losses in the FDIC's regulations. Specifically, the final rule would replace, for CECL adopters, all references to ALLL with AACL (as applicable) in the FDIC's capital rule codified at 12 CFR part 324, including in the definitions of ''identified losses'' and ''standardized total risk-weighted assets.'' The final rule also makes conforming changes to the FDIC regulations in 12 CFR parts 327 and 347 by replacing references to ALLL with allowance for credit losses (as determined in accordance with U.S. GAAP). The final rule also makes conforming changes to 12 CFR part 390 by adding provision for credit losses. Finally, consistent with the changes to the Board's stress testing rules, the final rule makes similar conforming changes to the FDIC's stress testing rules codified at 12 CFR part 325.

IV. Long Term Considerations With CECL

Several commenters recommended that the agencies neutralize the effects of CECL in the capital rule as an alternative to the proposed phase-in approach. Several commenters requested that the agencies study CECL's effect on regulatory capital, including CECL's effects over the economic cycle; review the regulatory capital requirements with respect to allowances; and conduct cost-benefit analysis of CECL's implementation on small and medium-sized banking organizations. One commenter requested that the agencies ask the FASB to delay implementation of CECL until a study is conducted on CECL's effects on the overall stability of the banking sector and on the availability, accessibility, and affordability of credit. One commenter asked the agencies to engage with the FASB to make changes to CECL to minimize its effects on regulatory capital. Another commenter asked the agencies to consider issuing interpretative industry guidelines that will help narrow the range of potential practices. Additional comments were received on the interaction between CECL and stress testing. One commenter asked that any decision the Board makes regarding implementation of CECL to depository institution holding companies that are engaged in significant insurance activities reflect the Building Block Approach to capital.

The agencies recognize commenters' concerns about CECL's effects on regulatory capital. The agencies are committed to closely monitoring the effects of CECL on regulatory capital and bank lending practices. This ongoing monitoring will include the review of data provided by banking organizations, as well as information observed from banking organizations' parallel runs before their adoption of CECL and their implementation of CECL.

V. Regulatory Analyses

A. Paperwork Reduction Act

Certain provisions of the final rule contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) (PRA). In accordance with the requirements of the PRA, the agencies may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The agencies reviewed the final rule and determined that the final rule revises certain

disclosure and reporting requirements that have been previously cleared by the OMB under various control numbers. The agencies will revise and extend these information collections for three years. The information collections for the disclosure requirements contained in the final 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 section 1320.11 of the OMB's implementing regulations (5 CFR part 1320). The Board reviewed the final rule under the authority delegated to the Board by OMB.

Disclosure Burden—Advanced Approaches Banking Organizations

Current Actions

Section 173 of the capital rule requires that advanced approaches banking organizations publicly disclose capital-related information as provided in a series of 13 tables. For advanced approaches banking organizations, the agencies made revisions to Tables 2, 3, and 5 in section 173 of the capital rule to reflect the adoption of CECL. In addition, the agencies made revisions to those tables for electing advanced approaches banking organizations to disclose two sets of regulatory capital ratios. One set reflects such banking organization's capital ratios with the CECL transition provision and the other set reflects the banking organization's capital ratios on a fully phased-in basis. This aspect of the final rule affects the below-listed information collections.

The changes in the disclosure requirements to Tables 2, 3, and 5 in section 173 of the capital rule result in an increase in the average hours per response per agency of 48 hours for the initial setup burden. In addition, the changes in the disclosure requirements to Tables 2, 3, and 5 in section 173 of the capital rule result in an increase in the average hours per response per agency of 6 hours for ongoing (quarterly) burden.[29]

Revision, With Extension, of the Following Information Collections

OCC

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

Frequency: Quarterly, annual.

Affected Public: Businesses or other for-profit.

Respondents: National banks, state member banks, state nonmember banks, and state and federal savings associations.

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

Recordkeeping (Ongoing)—16.

Standardized Approach

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

Advanced Approach

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

Revisions estimated annual burden: 432 hours.

Estimated annual burden hours: 1,088 hours initial setup, 66,017 hours for ongoing.

Board

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

Frequency: Quarterly, annual.

Affected Public: Businesses or other for-profit.

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

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

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

Recordkeeping (Ongoing)—16.

Standardized Approach

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

Advanced Approach

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

Risk-based Capital Surcharge for GSIBs

Recordkeeping (Ongoing)—0.5.

Revisions estimated annual burden: 456 hours.

Estimated annual burden hours: 1,136 hours initial setup, 78,591 hours for ongoing.

FDIC

Title of Information Collection: Regulatory Capital Rule.

Frequency: Quarterly, annual.

Affected Public: Businesses or other for-profit.

Respondents: State nonmember banks, state savings associations, and certain subsidiaries of those entities.

OMB control number: 3064–0153.

Estimated number of respondents: 3,575 (of which 2 are advanced approaches institutions).

Estimated average hours per response:

Minimum Capital Ratios

Recordkeeping (Ongoing)—16.

Standardized Approach

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

Advanced Approach

Recordkeeping (Initial setup)—460.
Recordkeeping (Ongoing)—540.77.
Recordkeeping (Ongoing quarterly)—20.
Disclosure (Initial setup)—328.
Disclosure (Ongoing)—5.78.

[29] In an effort to provide transparency, the total cumulative burden for each agency is shown. In addition, as stated in the Notice of Proposed Rulemaking, Simplifications to the Capital Rule Pursuant to the Economic Growth and Regulatory Paperwork Reduction Act of 1996, 82 FR 49984 (October 27, 2017), in order to be consistent across the agencies, the agencies are also applying a conforming methodology for calculating the burden estimates.

Disclosure (Ongoing quarterly)—41.

Revisions estimated annual burden: 96 hours.

Estimated annual burden hours: 1,136 hours initial setup, 130,806 hours for ongoing.

Reporting Burden—FFIEC and Board Forms

Current Actions

The agencies also plan to make changes to certain FFIEC and Board reporting forms and/or their related instructions as a result of the issuance of ASU 2016–13. In particular, the forms and/or related instructions for the following FFIEC reports could be affected: Consolidated Reports of Condition and Income (Call Reports) (FFIEC 031, FFIEC 041, and FFIEC 051; OMB No. 1557–0081, 7100–0036, and 3064–0052), Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002; OMB No. 7100–0032), Report of Assets and Liabilities of a Non-U.S. Branch that is Managed or Controlled by a U.S. Branch or Agency of a Foreign (Non-U.S.) Bank (FFIEC 002S; OMB No. 7100–0032), Foreign Branch Report of Condition (FFIEC 030; OMB No. 1557–0099, 7100–0071, and 3064–0011), Abbreviated Foreign Branch Report of Condition (FFIEC 030S; OMB No. 1557–0099, 7100–0071, and 3064–0011), and Regulatory Capital Reporting for Institutions Subject to the Advanced Capital Adequacy Framework (FFIEC 101; OMB No. 1557–0239, 7100–0319, and 3064–0159). As a result of the proposal, a separate 60-day **Federal Register** notice [30] addressed these changes to the FFIEC forms and/or instructions. These changes will also be addressed in separate 30-day **Federal Register** notice.

The forms and/or related instructions for the following Board reports could be affected: Financial Statements of Foreign Subsidiaries of U.S. Banking Organizations (FR 2314; OMB No. 7100–0073), Domestic Finance Company Report of Consolidated Assets and Liabilities (FR 2248; OMB No. 7100–0005), Weekly Report of Selected Assets and Liabilities of Domestically Chartered Commercial Banks and U.S. Branches and Agencies of Foreign Banks (FR 2644; OMB No. 7100–0075), Consolidated Report of Condition and Income for Edge and Agreement Corporations (FR 2886b; OMB No. 7100–0086), Financial Statements of U.S. Nonbank Subsidiaries Held by Foreign Banking Organizations (FR Y–7N; 7100–0125), Consolidated Financial Statements for Holding Companies (FR Y–9C; OMB No. 7100–0128), Parent Company Only Financial Statements for Large Holding Companies (FR Y–9LP; OMB No. 7100–0128), Parent Company Only Financial Statements for Small Holding Companies (FR Y–9SP; OMB No. 7100–0128), Financial Statements of U.S. Nonbank Subsidiaries of U.S. Holding Companies (FR Y–11; OMB No. 7100–0244), Capital Assessments and Stress Testing (FR Y–14; OMB No. 7100–0341), and Banking Organization Systemic Risk Report (FR Y–15; OMB No. 7100- 0352). These changes to the FFIEC forms and/or instructions as well as the Board forms and/or instructions would be addressed in separate **Federal Register** notices.

B. Regulatory Flexibility Act

OCC: The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* (RFA), requires an agency, in connection with a final 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 final 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 final rule would apply to all OCC supervised entities, and thus potentially affects a substantial number of small entities. To determine whether a final rule would have a significant effect on those small entities, the OCC considers whether the economic impact associated with the final rule is greater than or equal to either 5 percent of a small entity's total annual salaries and benefits or 2.5 percent of a small entity's total non-interest expense. The OCC estimates the final rule would not generate any costs for affected small entities. The final rule may generate a benefit for those small entities that elect the transition. The benefit ranges between approximately $4,800 to $30,000 per electing small entity, depending on the year the entity adopts the transition and the amount of increase in the entity's loan loss reserves. This estimate is based on the potential savings to small entities from not needing to raise additional capital related to CECL implementation due to the regulatory capital transition. The estimated benefit is not significant in relation to the measures described above. Therefore, the OCC certifies that the final rule would not have a significant economic impact on a substantial number of OCC-supervised small entities.

Board: The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* generally requires that, in connection with a proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis (IRFA).[31] The Board solicited public comment on this proposal in a notice of proposed rulemaking [32] and has since considered the potential impact of this proposal on small entities in accordance with section 604 of the RFA. Based on the Board's analysis, and for the reasons stated below, the Board believes the final rule will not have a significant economic impact on a substantial number of small entities.

The RFA requires an agency to prepare a final regulatory flexibility analysis (FRFA) unless the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.[33] The FRFA must contain: (1) A statement of the need for, and objectives of, the rule; (2) a statement of the significant issues raised by the public comments in response to the IRFA, a statement of the agency's assessment of such issues, and a statement of any changes made in the proposed rule as a result of such comments; (3) the response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule, and a detailed statement of any changes made to the proposed rule in the final rule as a result of the comments; (4) a description of an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available; (5) a description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and (6) a description of the steps the agency has taken to minimize the significant economic impact on small entities, including a statement for selecting or rejecting the other significant

[30] 83 FR 49160 (September 28, 2018).

[31] *See* 5 U.S.C. 603, 604 and 605.

[32] 83 FR 22312 (May 14, 2018).

[33] 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 December 31, 2017, there were approximately 3,384 small bank holding companies, 230 small savings and loan holding companies, and 559 small state member banks.

alternatives to the rule considered by the agency.

Statement of the need for, and objectives of, the final rule.

As discussed in detail above, the final rule identifies which credit loss allowances under ASU 2016–13 are eligible for inclusion in regulatory capital and provides banking organizations an optional three-year transition period to phase in the immediate effect on regulatory capital that may result from adoption of this accounting standard (ASU 2016–13). The final rule also makes conforming amendments to other regulations.

The Board has authority under the International Lending Supervision Act (ILSA) [34] and the PCA provisions of the Federal Deposit Insurance Act [35] 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.[36] 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 insured depository institution is well capitalized, adequately capitalized, undercapitalized, and significantly undercapitalized.[37] In addition, the Board has authority to establish regulatory capital standards for bank holding companies under ILSA [38] and the Bank Holding Company Act [39] and for savings and loan holding companies under the Home Owners Loan Act.[40]

All banking organizations will be required to adopt ASU 2016–13, which will likely result in an increase in credit loss allowances. An increase in a banking organization's credit loss allowances will reduce the firm's retained earnings and therefore its CET1 capital. The final rule identifies those credit loss allowances under ASU 2016–13 that are eligible for inclusion in regulatory capital. Further, the final rule introduces a three-year transition period, which allows a banking organization to phase in the immediate impact of adoption of ASU 2016–13. During the transition period, a banking organization that elects to use the phase-in will report higher capital than it otherwise would under the current capital rule.

The final rule also makes conforming amendments to certain of the Board's other regulations. In particular, certain other regulations of the Board include a definition of ''capital stock and surplus,'' which reflect the current practice of banking organizations establishing ALLL to cover estimated credit losses on loans, lease financing receivables, or other extensions of credit. The final rule allows banking organizations that are subject to these regulations to also include in the definition of ''capital stock and surplus'' those credit loss allowances under ASU 2016–13 that would be eligible for inclusion in regulatory capital.

A discussion of the significant issues raised by public comments in response to the IRFA, and the Board's response to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule.

The Board did not receive any comments on the IRFA that it published in connection with the proposal. In addition, the Chief Counsel for Advocacy of the Small Business Administration did not file any comments in response to the proposal. Accordingly, no changes were made to the proposal as a result of RFA-related comments.

Description and estimate of the number of small entities to which the rule will apply.

Most aspects of the final rule apply to all state member banks, as well as generally all bank holding companies and savings and loan holding companies that are subject to the Board's capital rule. As of December 31, 2017, there were approximately 3,384 bank holding companies, 230 savings and loan holding companies, and 559 state member banks that qualified as small entities. The final rule revises the Board's capital rule, which applies to bank holding companies and savings and loan holding companies with greater than $1 billion in total assets. Therefore, virtually all bank holding companies and savings and loan holding companies that would be subject to the final rule do not qualify as small entities. The final rule will apply to state member banks that qualify as small entities.

Description of the projected reporting, recordkeeping and other compliance requirements of the rule.

The final rule will impose some small recordkeeping, reporting, and compliance requirements on Board-regulated institutions. Specifically, the final rule would change certain disclosure requirements for advanced-approaches institutions, which include banking organizations with consolidated assets of at least $250 billion or consolidated on-balance sheet foreign exposures of at least $10 billion or if the banking organization. These requirements would not apply to small entities, and there are no other expected compliance requirements associated with the final rule. The agencies are separately updating the relevant reporting forms.

Description of the steps taken to minimize any significant economic impact on small entities.

The Board does not believe that the final rule will impose significant costs on small entities. With respect to Board-regulated institutions that do qualify as small entities, the final rule's revisions to the Board's capital rule should allow institutions to include additional credit loss allowances into regulatory capital than they otherwise would be able to under the current capital rule. However, there is uncertainty as to the amount of the benefit that institutions will accrue, given that the impact of CECL will depend on the economic environment at the time a firm adopts CECL. The Board does not believe there are significant alternatives to the final rule that have less economic impact on small entities but the Board is committed to closely monitoring the effects of CECL on regulatory capital and bank lending practices. In addition, the Board does not believe that the final rule duplicates, overlaps, or conflicts with any other Federal Rules.

FDIC: The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* generally requires an agency, in connection with a final rule, to prepare and make available a final regulatory flexibility analysis that describes the impact of a final rule on small entities.[41] 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 who are independently owned and operated or owned by a holding company with less than $550 million in total assets.[42]

[34] 12 U.S.C. 3901–3911.

[35] 12 U.S.C. 1831*o.*

[36] 12 U.S.C. 3907(a)(1).

[37] 12 U.S.C. 1831*o*(c)(2).

[38] *See* 12 U.S.C. 3907.

[39] *See* 12 U.S.C. 1844.

[40] *See* 12 U.S.C. 1467a(g)(1).

[41] 5 U.S.C. 601 *et seq.*

[42] The SBA defines a small banking organization as having $550 million or less in assets, where ''a financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' See 13 CFR 121.201 (as amended, effective December 2,

Description of Need and Policy Objectives

In June 2016, the FASB issued ASU 2016–13, which revises the accounting for credit losses under U.S. GAAP. CECL differs from the incurred loss methodology currently implemented by institutions in several key respects. CECL requires banking organizations to recognize lifetime expected credit losses for financial assets measured at amortized cost, not just those credit losses that are probable of having been incurred as of the reporting date. In addition to maintaining the current requirement for banking organizations to consider past events and current conditions, CECL requires the incorporation of reasonable and supportable forecasts in developing an estimate of lifetime expected credit losses.

Upon adoption of CECL, a banking organization will record a one-time adjustment to its allowance for credit losses as of the beginning of its fiscal year of adoption equal to the difference, if any, between the amount of credit loss allowances required under the incurred loss methodology and the amount of credit loss allowances required under the CECL methodology. Changes to retained earnings, DTAs, and credit loss allowances affect a banking organization's calculation of regulatory capital.[43] To address changes made in U.S. GAAP following the FASB's issuance of ASU 2106–13, the FDIC is amending its capital rule [44] to give banking organizations the option to phase in the immediate, potentially adverse effects of CECL adoption over a three-year period.

Description of the Final Rule

A description of the rule is presented Section III: Final Rule. Please refer to it for further information.

Other Federal Rules

The FDIC has not identified any likely duplication, overlap, and/or potential conflicts between the final rule and any other federal rule.

Response to Comments Regarding the Regulatory Flexibility Act

The FDIC did not receive any public comments on the supporting information it presented in the Regulatory Flexibility Act section of the Notice of Proposed Rulemaking.

The Agencies did receive public comments on the proposed rulemaking. A summary of those comments, and the Agencies' consideration of them, is presented in Section II.B. The vast majority of public comments on the NPR related to the implementation of CECL rather than the economic impacts of the proposed transition period.

Several commenters requested that the FDIC increase the transition period from the proposed three-year transition in the NPR to five years in order to develop and validate the necessary data and models. One commenter opposed expansion of the transition period, claiming that the three-year phase in is already generous given the advance notice banks have had of the new accounting standards, and that the new capital requirements reflect the socially optimal level of capital. Upon consideration of the comments, the FDIC has chosen to maintain the proposed three-year transition period. The FDIC believes that the three-year CECL transition provision will adequately address banking organizations' challenges in capital planning for CECL implementation, while reducing the likelihood of a coincidence of rising capital requirements during a future downturn in the business cycle which could reduce the benefits of the rule and have deleterious effects on lending activity .

Economic Impacts on Small Entities

The final rule applies to all FDIC-supervised small entities. The FDIC supervises 3,575 depository institutions, of which 2,763 are defined as small banking entities by the terms of the RFA.[45] However, the number of small entities that will elect to utilize the three-year transition schedule is difficult to estimate with available information. Utilization will likely depend on an institution's business model, the preferences of senior management or ownership, the assets held by the institution, and reasonable expectations of future macroeconomic conditions, among other things.

As described in the overview section, the adoption of CECL will result in earlier recognition of credit losses when compared to the current incurred loss methodology. Therefore, the rule is intended to provide relief to covered institutions for certain adverse effects associated with the timing difference in provisioning for such losses, should they elect to utilize the option that this rule provides. The final rule will benefit small, FDIC-supervised institutions that adopt the three year transition schedule by allowing them to phase-in any needed increases in capital associated with the implementation of CECL over that time, thereby reducing costs by the time value of money. It is difficult to accurately estimate the potential benefit for small institutions with available data because it depends on the assets held by small institutions, their provision activity, future economic conditions, and the decisions of senior management. However, institutions will ultimately need to raise the same amount of capital whether they use the phase-in option or not. The rule allows banks to spread the cost of raising additional capital over three years rather than incurring that cost right away, should they choose to do so. The value of that option depends on the discount rate, which is generally assumed to be near the risk-free interest rate, so the benefits of the rule are unlikely to constitute a significant economic impact.

The final rule would pose some small regulatory costs for small, FDIC-supervised institutions that opt to utilize the three-year transition schedule. However, the small regulatory costs associated with implementing the three-year transition schedule will be less than the benefits posed by utilizing the schedule for those institutions that opt to utilize it.

Alternatives Considered

As an alternative to the final rule, the FDIC considered allowing CECL to go into effect with no accompanying action by the financial regulators. However, this alternative would likely result in higher costs for small entities. The FDIC considered a longer transition period of up to five years, as some commenters requested. While this alternative might reduce the costs of adopting CECL more than the proposed alternative, it also heightens the risk of capital increases coinciding with a potential future downturn in the business cycle. The coincidence of rising capital requirements during a future downturn in the business cycle could reduce the benefits of the proposed rule and have deleterious effects on lending activity.

A few commenters suggested allowing dynamic amortization whereby differences in allowances from an incurred loss estimate after the effective date could be amortized over the

2014). ''SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates.'' See 13 CFR 121.103. Following these regulations, the FDIC uses a covered entity's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the covered entity is ''small'' for the purposes of RFA.

[43] 12 CFR 3.20 (OCC); 12 CFR 217.20 (Board); 12 CFR 324.20 (FDIC).

[44] Under section 37 of the Federal Deposit Insurance Act, the accounting principles applicable to reports or statements required to be filed with the agencies by all insured depository institutions must be uniform and consistent with U.S. GAAP. See 12 U.S.C. 1831n(a)(2)(A).

[45] Call Report data, June 30 2018.

remaining transition period in order to address the volatility in the CECL allowance from a downturn in economic forecasts. The FDIC responded that, while there may be difficulties for capital planning due to the uncertainty of the economic environment at the time of CECL adoption, the extended transition period will mitigate any day-one adverse effects. The straight-line approach adopted by the FDIC avoids unnecessary complexity and operational burdens.

Certification

Based on the information presented above, the FDIC certifies that this rule will not have a significant economic impact on a substantial number of small entities.

C. Plain Language

Section 722 of the Gramm-Leach-Bliley Act [46] 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 final rule in a simple and straightforward manner and did not receive any comments on the use of plain language.

D. OCC Unfunded Mandates Reform Act of 1995

The OCC analyzed the final 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 final 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 final 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.

E. Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)

For purposes of SBREFA, the OMB makes a determination as to whether a final rule constitutes a ''major'' rule. If a rule is deemed a ''major rule'' by the OMB, SBREFA generally provides that the rule may not take effect until at least 60 days following its publication.[47] Notwithstanding any potential delay related to the OMB's pending determination, banking organizations subject to this final rule will be permitted to elect to comply with it as of January 1, 2019.

SBREFA defines a ''major rule'' as any rule that the Administrator of the Office of Information and Regulatory Affairs of the OMB finds has resulted in or is likely to result in—(A) an annual effect on the economy of $100,000,000 or more; (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions, or (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.[48] As required by SBREFA, the agencies will submit the final rule and other appropriate reports to Congress and the Government Accountability Office for review.

F. Administrative Procedure Act and Riegle Community Development and Regulatory Improvement Act of 1994

The Administrative Procedure Act (APA) requires that a final rule be published in the **Federal Register** no less than 30 days before its effective date unless, among other exceptions, the final rule relieves a restriction.[49]

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (''RCDRIA''),[50] in determining the effective date and administrative compliance requirements for a new regulation that imposes additional reporting, disclosure, or other requirements on insured depository institutions, 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, disclosure, or other new requirements on insured depository institutions 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.[51]

In accordance with these provisions, the agencies considered any administrative burdens, as well as benefits, that the final rule would place on depository institutions and their customers in determining the effective date and administrative compliance requirements of the final rule. The final rule provides regulatory capital transition provisions for banking organizations that early adopt CECL beginning after December 15, 2018, and thus relieves those banking organizations from compliance with certain stricter capital requirements that would otherwise have taken effect on January 1, 2019. However, the final rule also imposes new disclosure requirements for institutions that opt to utilize the three-year transition period. Therefore, in accordance with RCDRIA and the APA, the final rule will be effective no earlier than the first day of the calendar quarter following 30 days from the date on which the final rule is published in the **Federal Register**. Notwithstanding, banking organizations subject to this final rule will be permitted to elect to comply with it as of January 1, 2019.

List of Subjects

12 CFR Part 1

Banks, Banking, National banks, Reporting and recordkeeping requirements, Securities.

12 CFR Part 3

Administrative practice and procedure, Capital, National banks, Risk.

12 CFR Part 5

Administrative practice and procedure, Federal savings associations, National banks, Reporting and recordkeeping requirements, Securities.

12 CFR Part 23

Banks, Banking, National banks, Lease financing transactions, Leasing, Reporting and recordkeeping requirements.

12 CFR Part 24

Affordable housing, Community development, Credit, Investments, Economic development and job creation, Low- and moderate-income areas, Low and moderate income housing, National banks, Public welfare investments, Reporting and recordkeeping requirements, Rural areas, Small businesses, Tax credit investments.

12 CFR Part 32

National banks, Reporting and recordkeeping requirements.

[46] Public Law 106–102, section 722, 113 Stat. 1338, 1471 (1999).

[47] 5 U.S.C. 801(a)(3).

[48] 5 U.S.C. 804(2).

[49] 5 U.S.C. 553(d)(1).

[50] 12 U.S.C. 4802(a).

[51] 12 U.S.C. 4802.

12 CFR Part 46

Banking, Banks, Capital, Disclosures, National banks, Recordkeeping, Risk, Savings associations, Stress test.

12 CFR Part 208

Confidential business information, Crime, Currency, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Securities.

12 CFR Part 211

Exports, Federal Reserve System, Foreign banking, Holding companies, Investments, Reporting and recordkeeping requirements.

12 CFR Part 215

Credit, Penalties, Reporting and recordkeeping requirements.

12 CFR Part 217

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

12 CFR Part 223

Banks, Banking, Federal Reserve System.

12 CFR Part 225

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

12 CFR Part 252

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

12 CFR Part 324

Administrative practice and procedure, Banks, Banking, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 325

Banks, Banking, Reporting and recordkeeping requirements.

12 CFR Part 327

Bank deposit insurance, Banks, Banking, Savings associations.

12 CFR Part 347

Authority delegation (Government agencies), Bank deposit insurance, Banks, Banking, Credit, Foreign banking, Investments, Reporting and recordkeeping requirements, U.S. Investments abroad.

12 CFR Part 390

Administrative practice and procedure, Advertising, Aged, Civil rights, Conflict of interests, Credit, Crime, Equal employment opportunity, Fair housing, Government employees, Individuals with disabilities, Reporting and recordkeeping requirements, Savings associations.

Office of the Comptroller of the Currency

For the reasons set out in the joint preamble, the OCC proposes to amend 12 CFR chapter I as follows.

PART 1—INVESTMENT SECURITIES

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

Authority: 12 U.S.C. 1 *et seq.,* 12 U.S.C. 24 (Seventh), and 12 U.S.C. 93a.

■ 2. Section 1.2 is amended by revising paragraph (a)(2) to read as follows:

§ 1.2 Definitions.

(a) * * *

(2) The balance of a bank's allowance for loan and lease losses or adjusted allowances for credit losses, as applicable, not included in the bank's Tier 2 capital, for purposes of the calculation of risk-based capital described in paragraph (a)(1) of this section, as reported in the bank's Call Report.

* * * * *

PART 3—CAPITAL ADEQUACY STANDARDS

■ 3. 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).

■ 4. Section 3.2 is amended by:

■ a. Adding in alphabetical order a definition for ''adjusted allowances for credit losses (AACL)'';

■ b. Revising the definitions of ''carrying value'';

■ c. Adding in alphabetical order a definition for ''current expected credit losses (CECL)''; and

■ d. Revising the definition for ''eligible credit reserves'' and paragraph (2) of the definition of ''standardized total risk-weighted assets''.

The additions and revisions read as follows:

§ 3.2 Definitions.

* * * * *

Adjusted allowances for credit losses (AACL) means, with respect to a national bank or Federal savings association that has adopted CECL, valuation allowances that have been established through a charge against earnings or retained earnings for expected credit losses on financial assets measured at amortized cost and a lessor's net investment in leases that have been established to reduce the amortized cost basis of the assets to amounts expected to be collected as determined in accordance with GAAP. For purposes of this part, adjusted allowances for credit losses include allowances for expected credit losses on off-balance sheet credit exposures not accounted for as insurance as determined in accordance with GAAP. Adjusted allowances for credit losses exclude ''allocated transfer risk reserves'' and allowances created that reflect credit losses on purchased credit deteriorated assets and available-for-sale debt securities.

* * * * *

Carrying value means, with respect to an asset, the value of the asset on the balance sheet of the national bank or Federal savings association as determined in accordance with GAAP. For all assets other than available-for-sale debt securities or purchased credit deteriorated assets, the carrying value is not reduced by any associated credit loss allowance that is determined in accordance with GAAP.

* * * * *

Current Expected Credit Losses (CECL) means the current expected credit losses methodology under GAAP.

* * * * *

Eligible credit reserves means:

(1) For a national bank or Federal savings association that has not adopted CECL, all general allowances that have been established through a charge against earnings to cover estimated credit losses associated with on- or off-balance sheet wholesale and retail exposures, including the ALLL associated with such exposures, but excluding allocated transfer risk reserves established pursuant to 12 U.S.C. 3904 and other specific reserves created against recognized losses; and

(2) For a national bank or Federal savings association that has adopted CECL, all general allowances that have been established through a charge against earnings or retained earnings to cover expected credit losses associated with on- or off-balance sheet wholesale and retail exposures, including AACL associated with such exposures. Eligible credit reserves exclude allocated transfer risk reserves established pursuant to 12 U.S.C. 3904, allowances that reflect credit losses on purchased credit deteriorated assets and available-

for-sale debt securities, and other specific reserves created against recognized losses.

* * * * *

Standardized total risk-weighted assets means:

* * * * *

(2) Any amount of a national bank's or Federal savings association's allowance for loan and lease losses or adjusted allowance for credit losses, as applicable, that is not included in tier 2 capital and any amount of ''allocated transfer risk reserves.''

* * * * *

§ 3.10 [Amended]

■ 5. Section 3.10 is amended in paragraph (c)(3)(ii)(A) by removing the words ''allowance for loan and lease losses'' and adding in their place the words ''allowance for loan and lease losses or adjusted allowance for credit losses, as applicable,''.

§ 3.20 [Amended]

■ 6a. In § 3.20, in paragraph (d)(3), remove first occurrence of the word ''ALLL'' and adding in its place the words ''ALLL or AACL, as applicable,'' and in the second occurrence ''ALLL or AACL, as applicable'' is added in its place.

§ 3.22 [Amended]

■ 6b. In § 3.22, in footnote 23 at the paragraph (c) subject heading, remove the word ''ALLL'' and add in its place the words ''ALLL or AACL, as applicable,''.

§ 3.63 [Amended]

■ 7a. In § 3.63, Table 5 is amended in its paragraphs (a)(5) and (e)(5) by removing the phrase ''allowance for loan and lease losses,'' and adding in its place wherever it appears the phrase ''allowance for loan and lease losses or adjusted allowance for credit losses, as applicable,'' and in its paragraph (g) by removing the word ''ALLL'' and adding in its place the words ''ALLL or AACL, as applicable''.

§ 3.124 [Amended]

■ 7b. In § 3.124, in paragraph (a) remove the word ''ALLL'' and add in its place the words ''ALLL or AACL, as applicable,'' and in paragraph (b)(2) remove the word ''ALLL'' and add in its place ''ALLL or AACL, as applicable''.

§ 3.173 [Amended]

■ 8. Section 3.173 is amended:

■ a. In Table 2 by adding a paragraph (e);

■ b. In Table 3, by revising its paragraph (e), redesignating paragraph (f) as paragraph (g), and adding a new paragraph (f); and

■ c. In Table 5 by:

■ i. Removing the phrase ''allowance for loan and lease losses,'' and adding in its place the phrase ''allowance for loan and lease losses or adjusted allowance for credit losses, as applicable,'' in its paragraph (a)(5); and

■ ii. Revising its paragraph (g).

The additions and revisions read as follows:

§ 3.173 Disclosures by certain advanced approaches national banks or Federal savings associations.

* * * * *

TABLE 2 TO § 3.173—CAPITAL STRUCTURE

* * * * * * *	
(e)	(1) Whether the national bank or Federal savings association has elected to phase in recognition of the transitional amounts as defined in § 3.301. (2) The national bank's or Federal savings association's common equity tier 1 capital, tier 1 capital, and total capital without including the transitional amounts.

TABLE 3 TO § 3.173—CAPITAL ADEQUACY

* * * * * * *	
(e)	(1) Common equity tier 1, tier 1 and total risk-based capital ratios reflecting the transition provisions described in § 3.301: (A) For the top consolidated group; and (2) For each depository institution subsidiary.
(f)	Common equity tier 1, tier 1 and total risk-based capital ratios reflecting the full adoption of CECL: (1) For the top consolidated group; and (2) For each depository institution subsidiary.
* * * * * * *	

* * * * *

TABLE 5 TO § 3.173—CREDIT RISK: GENERAL DISCLOSURES

* * * * * * *	
(g)	Reconciliation of changes in ALLL or AACL, as applicable.[6]
* * * * * * *	
* * * * * * *	

[6] The reconciliation should include the following: A description of the allowance; the opening balance of the allowance; charge-offs taken against the allowance during the period; amounts provided (or reversed) for estimated probable loan losses during the period; any other adjustments (for example, exchange rate differences, business combinations, acquisitions and disposals of subsidiaries), including transfers between allowances; and the closing balance of the allowance. Charge-offs and recoveries that have been recorded directly to the income statement should be disclosed separately.

* * * * *

Subpart G—Transition Provisions

■ 9. Section 3.301 is added to subpart G to read as follows:

§ 3.301 Current Expected Credit Losses (CECL) Transition.

(a) *CECL transition provision criteria.* A national bank or Federal savings association may elect to use a CECL transition provision pursuant to this section only if the national bank or Federal savings association records a reduction in retained earnings due to the adoption of CECL as of the beginning of the fiscal year in which the national bank or Federal savings association adopts CECL.

(2) A national bank or Federal savings association that elects to use the CECL transition provision must use the CECL transition provision in the first Call Report filed by the national bank or Federal savings association after it adopts CECL.

(3) A national bank or Federal savings association that does not elect to use the CECL transition provision as of the first Call Report filed as described in paragraph (a)(2) of this section may not elect to use the CECL transition provision in subsequent reporting periods.

(b) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Transition period* means the three-year period beginning the first day of the fiscal year in which a national bank or Federal savings association adopts CECL.

(2) *CECL transitional amount* means the decrease net of any DTAs, in the amount of a national bank's or Federal savings association's retained earnings as of the beginning of the fiscal year in which the national bank or Federal savings association adopts CECL from the amount of the national bank's or Federal savings association's retained earnings as of the closing of the fiscal year-end immediately prior to the national bank's or Federal savings association's adoption of CECL.

(3) *DTA transitional amount* means the increase in the amount of a national bank's or Federal savings association's DTAs arising from temporary differences as of the beginning of the fiscal year in which the national bank or Federal savings association adopts CECL from the amount of the national bank's or Federal savings association's DTAs arising from temporary differences as of the closing of the fiscal year-end immediately prior to the national bank's or Federal savings association's adoption of CECL.

(4) *AACL transitional amount* means the difference in the amount of a national bank's or Federal savings association's AACL as of the beginning of the fiscal year in which the national bank or Federal savings association adopts CECL and the amount of the national bank's or Federal savings association's ALLL as of the closing of the fiscal year-end immediately prior to the national bank's or Federal savings association's adoption of CECL.

(5) *Eligible credit reserves transitional amount* means the increase in the amount of a national bank's or Federal savings association's eligible credit reserves as of the beginning of the fiscal year in which the national bank or Federal savings association adopts CECL from the amount of the national bank's or Federal savings association's eligible credit reserves as of the closing of the fiscal year-end immediately prior to the national bank's or Federal savings association's adoption of CECL.

(c) *Calculation of CECL transition provision.* (1) For purposes of the election described in paragraph (a)(1) of this section, a national bank or Federal savings association must make the following adjustments in its calculation of regulatory capital ratios:

(i) Increase retained earnings by seventy-five percent of its CECL transitional amount during the first year of the transition period, increase retained earnings by fifty percent of its CECL transitional amount during the second year of the transition period, and increase retained earnings by twenty-five percent of its CECL transitional amount during the third year of the transition period;

(ii) Decrease amounts of DTAs arising from temporary differences by seventy-five percent of its DTA transitional amount during the first year of the transition period, decrease amounts of DTAs arising from temporary differences by fifty percent of its DTA transitional amount during the second year of the transition period, and decrease amounts of DTAs arising from temporary differences by twenty-five percent of its DTA transitional amount during the third year of the transition period;

(iii) Decrease amounts of AACL by seventy-five percent of its AACL transitional amount during the first year of the transition period, decrease amounts of AACL by fifty percent of its AACL transitional amount during the second year of the transition period, and decrease amounts of AACL by twenty-five percent of its AACL transitional amount during the third year of the transition period;

(iv) Increase average total consolidated assets as reported on the Call Report for purposes of the leverage ratio by seventy-five percent of its CECL transitional amount during the first year of the transition period, increase average total consolidated assets as reported on the Call Report for purposes of the leverage ratio by fifty percent of its CECL transitional amount during the second year of the transition period, and increase average total consolidated assets as reported on the Call Report for purposes of the leverage ratio by twenty-five percent of its CECL transitional amount during the third year of the transition period;

(2) For purposes of the election described in paragraph (a)(1) of this section, an advanced approaches national bank or Federal savings association must make the following additional adjustments to its calculation of regulatory capital ratios:

(i) Increase total leverage exposure for purposes of the supplementary leverage ratio by seventy-five percent of its CECL transitional amount during the first year of the transition period, increase total leverage exposure for purposes of the supplementary leverage ratio by fifty percent of its CECL transitional amount during the second year of the transition period, and increase total leverage exposure for purposes of the supplementary leverage ratio by twenty-five percent of its CECL transitional amount during the third year of the transition period; and

(ii) An advanced approaches national bank or Federal savings association that has completed the parallel run process and that has received notification from the OCC pursuant to § 3.121(d) must decrease amounts of eligible credit reserves by seventy-five percent of its eligible credit reserves transitional amount during the first year of the transition period, decrease amounts of eligible credit reserves by fifty percent of its eligible credit reserves transitional amount during the second year of the transition provision, and decrease amounts of eligible credit reserves by twenty-five percent of its eligible credit reserves transitional amount during the third year of the transition provision.

(3) An advanced approaches national bank or Federal savings association that has completed the parallel run process and that has received notification from the OCC pursuant to § 3.121(d), and whose amount of expected credit loss exceeded its eligible credit reserves immediately prior to the adoption of CECL, and that this has an increase in common equity tier 1 capital as of the beginning of the fiscal year in which it adopts CECL after including the first

year portion of the CECL transitional amount must decrease its CECL transitional amount used in paragraph (c) of this section by the full amount of its DTA transitional amount.

(4) Notwithstanding any other requirement in this section, for purposes of this paragraph, in the event of a business combination involving a national bank or Federal savings association where one or both of the national banks or Federal savings associations have elected the treatment described in this section:

(i) If the acquirer national bank or Federal savings association (as determined under GAAP) elected the treatment described in this section, the acquirer national bank or Federal savings association must continue to use the transitional amounts (unaffected by the business combination) that it calculated as of the date that it adopted CECL through the end of its transition period.

(ii) If the acquired insured depository institution (as determined under GAAP) elected the treatment described in this section, any transitional amount of the acquired insured depository institution does not transfer to the resulting national bank or Federal savings association.

PART 5—RULES, POLICIES, AND PROCEDURES FOR CORPORATE ACTIVITIES

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

Authority: 12 U.S.C. 1 *et seq.,* 24a, 93a, 215a–2, 215a–3, 481, 1462a, 1463, 1464, 2901 *et seq.,* 3907, and 5412(b)(2)(B).

■ 11. Section 5.3 is amended by revising paragraph (e)(2) to read as follows:

§ 5.3 Definitions.

* * * * *

(e) * * *

(2) The balance of a national bank's or Federal savings association's allowance for loan and lease losses or adjusted allowance for credit losses, as applicable, not included in the bank's Tier 2 capital, for purposes of the calculation of risk-based capital described in paragraph (e)(1) of this section, as reported in the Call Report.

* * * * *

■ 12. Section 5.37 is amended by revising paragraph (c)(3)(ii) to read as follows:

§ 5.37 Investment in national bank or Federal savings association premises.

* * * * *

(c) * * *

(3) * * *

(ii) The balance of a national bank's or Federal savings association's allowance for loan and lease losses or adjusted allowance for credit losses, as applicable, not included in the bank's Tier 2 capital, for purposes of the calculation of risk-based capital described in paragraph (c)(3)(i) of this section, as reported in the Call Report.

* * * * *

PART 23—LEASING

■ 13. The authority citation for part 23 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.,* 24(Seventh), 24(Tenth), and 93a.

■ 14. Section 23.2 is amended by revising paragraph (b)(2) to read as follows:

§ 23.2 Definitions.

* * * * *

(b) * * *

(2) The balance of a bank's allowance for loan and lease losses or adjusted allowance for credit losses, as applicable, not included in the bank's Tier 2 capital, for purposes of the calculation of risk-based capital described in paragraph (b)(1) of this section, as reported in the bank's Call Report.

* * * * *

PART 24—COMMUNITY AND ECONOMIC DEVELOPMENT ENTITIES, COMMUNITY DEVELOPMENT PROJECTS, AND OTHER PUBLIC WELFARE INVESTMENTS

■ 15. The authority citation for part 24 continues to read as follows:

Authority: 12 U.S.C. 24(Eleventh), 93a, 481 and 1818.

■ 16. Section 24.2 is amended by revising paragraph (b)(2) to read as follows:

§ 24.2 Definitions.

* * * * *

(b) * * *

(2) The balance of a bank's allowance for loan and lease losses or adjusted allowance for credit losses, as applicable, not included in the bank's Tier 2 capital, for purposes of the calculation of risk-based capital described in paragraph (b)(1) of this section, as reported in the bank's Call Report.

* * * * *

PART 32—LENDING LIMITS

■ 17. 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.

■ 18. Section 32.2 is amended by revising paragraph (c)(2) to read as follows:

§ 32.2 Definitions

* * * * *

(c) * * *

(2) The balance of a national bank's or savings association's allowance for loan and lease losses or adjusted allowance for credit losses, as applicable, not included in the bank's Tier 2 capital, for purposes of the calculation of risk-based capital described in paragraph (c)(1) of this section, as reported in the bank's Call Report.

* * * * *

PART 46—ANNUAL STRESS TEST

■ 21. The authority citation for part 46 continues to read as follows:

Authority: 12 U.S.C. 93a; 1463(a)(2); 5365(i)(2); and 5412(b)(2)(B).

§ 46.8 [Amended]

■ 22. Section 46.8 is amended by removing the phrase ''loan and lease'' and adding in its place ''credit'' in paragraphs (c)(3) and (d)(1).

* * * * *

Board of Governors of the 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 follows:

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

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

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

■ 24. In § 208.2, paragraph (d) is revised to read as follows:

§ 208.2 Definitions.

* * * * *

(d) *Capital stock and surplus* means, unless otherwise provided in this part, or by statute:

(1) Tier 1 and tier 2 capital included in a member bank's risk-based capital (as defined in § 217.2 of Regulation Q); and

(2) The balance of a member bank's allowance for loan and lease losses or adjusted allowance for credit losses, as applicable, not included in its tier 2 capital for calculation of risk-based capital, based on the bank's most recent Report of Condition and Income filed under 12 U.S.C. 324.

* * * * *

PART 211—INTERNATIONAL BANKING OPERATIONS (REGULATION K)

■ 25. The authority citation for part 211 continues to read as follows:

Authority: 12 U.S.C. 221 *et seq.,* 1818, 1835a, 1841 *et seq.,* 3101 *et seq.,* 3901 *et seq.,* and 5101 *et seq.;* 15 U.S.C. 1681s, 1681w, 6801 and 6805.

Subpart A—International Operations of U.S. Banking Organizations

■ 26. In § 211.2, revise paragraph (c)(1) to read as follows:

§ 211.2 Definitions.

* * * * *

(c) * *

(1) For organizations subject to Regulation Q:

(i) Tier 1 and tier 2 capital included in an organization's risk-based capital (under Regulation Q); and

(ii) The balance of allowance for loan and lease losses or adjusted allowance for credit losses, as applicable, not included in an organization's tier 2 capital for calculation of risk-based capital, based on the organization's most recent consolidated Report of Condition and Income.

* * * * *

Subpart D—International Lending Supervision

■ 27. In § 211.43, revise paragraph (c)(4) to read as follows:

§ 211.43 Allocated transfer risk reserve.

* * * * *

(c) * * *

(4) *Alternative accounting treatment.* A banking institution is not required to establish an ATRR if it writes down in the period in which the ATRR is required, or has written down in prior periods, the value of the specified international assets in the requisite amount for each such asset. For purposes of this paragraph, international assets may be written down by a charge to the Allowance for Loan and Lease Losses or the allowance for credit losses, as applicable, to the extent permitted under U.S. generally accepted accounting principles, or a reduction in the principal amount of the asset by application of interest payments or other collections on the asset. However, the Allowance for Loan and Lease Losses or allowance for credit losses, as applicable, must be replenished in such amount necessary to restore it to a level which adequately provides for the estimated losses inherent in the banking institution's loan portfolio.

* * * * *

PART 215—LOANS TO EXECUTIVE OFFICERS, DIRECTORS, AND PRINCIPAL SHAREHOLDERS OF MEMBER BANKS (REGULATION O)

■ 28. The authority citation for part 215 continues to read as follows:

Authority: 12 U.S.C. 248(a), 375a(10), 375b(9) and (10), 1468, 1817(k), 5412; and Pub. L. 102–242, 105 Stat. 2236 (1991).

■ 29. In § 215.2, revise paragraph (i) to read as follows:

§ 215.2 Definitions.

* * * * *

(i) *Lending limit.* The lending limit for a member bank is an amount equal to the limit of loans to a single borrower established by section 5200 of the Revised Statutes,[52] 12 U.S.C. 84. This amount is 15 percent of the bank's unimpaired capital and unimpaired surplus in the case of loans that are not fully secured, and an additional 10 percent of the bank's unimpaired capital and unimpaired surplus in the case of loans that are fully secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, at least equal to the amount of the loan. The lending limit also includes any higher amounts that are permitted by section 5200 of the Revised Statutes for the types of obligations listed therein as exceptions to the limit. A member bank's unimpaired capital and unimpaired surplus equals:

(1) The bank's tier 1 and tier 2 capital included in the bank's risk-based capital under the capital rule of the appropriate Federal banking agency, based on the bank's most recent consolidated report of condition filed under 12 U.S.C. 1817(a)(3); and

(2) The balance of the bank's allowance for loan and lease losses or adjusted allowance for credit losses, as applicable, not included in the bank's tier 2 capital for purposes of the calculation of risk-based capital under the capital rule of the appropriate Federal banking agency, based on the bank's most recent consolidated reports of condition filed under 12 U.S.C. 1817(a)(3).

* * * * *

[52] Where State law establishes a lending limit for a State member bank that is lower than the amount permitted in section 5200 of the Revised Statutes, the lending limit established by applicable State laws shall be the lending limit for the State member bank.

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

■ 30. 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.

■ 31. In § 217.2,

■ a. Add in alphabetical order a definition for ''adjusted allowances for credit losses (AACL)'';

■ b. Revise the definition of ''carrying value'';

■ c. Add in alphabetical order a definition for ''current expected credit losses (CECL)''; and

■ d. Revise the definitions of ''eligible credit reserves'' and paragraph (2) or the definition of ''standardized total risk-weighted assets''.

The additions and revisions read as follows:

§ 217.2 Definitions.

* * * * *

Adjusted allowances for credit losses (AACL) means, with respect to a Board-regulated institution that has adopted CECL, valuation allowances that have been established through a charge against earnings or retained earnings for expected credit losses on financial assets measured at amortized cost and a lessor's net investment in leases that have been established to reduce the amortized cost basis of the assets to amounts expected to be collected as determined in accordance with GAAP. For purposes of this part, adjusted allowances for credit losses include allowances for expected credit losses on off-balance sheet credit exposures not accounted for as insurance as determined in accordance with GAAP. Adjusted allowances for credit losses exclude ''allocated transfer risk reserves'' and allowances created that reflect credit losses on purchased credit deteriorated assets and available-for-sale debt securities.

* * * * *

Carrying value means, with respect to an asset, the value of the asset on the

balance sheet of a Board-regulated institution as determined in accordance with GAAP. For all assets other than available-for-sale debt securities or purchased credit deteriorated assets, the carrying value is not reduced by any associated credit loss allowance that is determined in accordance with GAAP.

* * * * *

Current Expected Credit Losses (CECL) means the current expected credit losses methodology under GAAP.

* * * * *

Eligible credit reserves means:

(1) For a Board-regulated institution that has not adopted CECL, all general allowances that have been established through a charge against earnings to cover estimated credit losses associated with on- or off-balance sheet wholesale and retail exposures, including the ALLL associated with such exposures, but excluding allocated transfer risk reserves established pursuant to 12 U.S.C. 3904 and other specific reserves created against recognized losses; and

(2) For a Board-regulated institution that has adopted CECL, all general allowances that have been established through a charge against earnings or retained earnings to cover expected credit losses associated with on- or off-balance sheet wholesale and retail exposures, including AACL associated with such exposures. Eligible credit reserves exclude allocated transfer risk reserves established pursuant to 12 U.S.C. 3904, allowances that reflect credit losses on purchased credit deteriorated assets and available-for-sale debt securities, and other specific reserves created against recognized losses.

* * * * *

Standardized total risk-weighted assets means:

* * * * *

(2) Any amount of the Board-regulated institution's allowance for loan and lease losses or adjusted allowance for credit losses, as applicable, that is not included in tier 2 capital and any amount of ''allocated transfer risk reserves.''

* * * * *

§ 217.10 [Amended]

■ 32. In § 217.10, in paragraph (c)(3)(ii)(A), remove the words ''allowance for loan and lease losses'' and add, in their place, the words ''allowance for loan and lease losses or adjusted allowance for credit losses, as applicable,''.

§ 217.20 [Amended]

■ 33a. In § 217.20, in paragraph (d)(3), remove the first occurrence of the word ''ALLL'' and add in its place the words ''ALLL or AACL, as applicable,'' and in the second occurrence ''ALLL or AACL, as applicable'' is added in its place.

§ 217.22 [Amended]

■ 33b. In § 217.22, in footnote 23 at the paragraph (c) subject heading, remove the word ''ALLL'' and add in its place the words ''ALLL or AACL, as applicable,''.

§ 217.63 [Amended]

■ 34a. In Table 5 to § 217.63, remove the words ''allowance for loan and lease losses'' and add, in their place, the words ''allowance for loan and lease losses or adjusted allowance for credit losses, as applicable,'' and remove the word ''ALLL'' and add, in its place, the words ''ALLL or AACL, as applicable''.

§ 217.124 [Amended]

■ 34b. In § 217.124, in paragraph (a) remove the word ''ALLL'' and add in its place the words ''ALLL or AACL, as applicable,'' and in paragraph (b)(2) remove the word ''ALLL'' and add in its place ''ALLL or AACL, as applicable''.

■ 35. Amend § 217.173 as follows:

■ a. In Table 2, add paragraph (e);

■ b. In Table 3, revise paragraph (e), redesignate paragraph (f) as paragraph (g), and add a new paragraph (f); and

■ c. In Table 5, revise paragraphs (a), (e), and (g).

The additions and revisions read as follows.

§ 217.173 Disclosures by certain advanced approaches Board-regulated institutions.

* * * * *

TABLE 2 TO § 217.173—CAPITAL STRUCTURE

*	*	* * * * *
	(e)	(1) Whether the Board-regulated institution has elected to phase in recognition of the transitional amounts as defined in § 217.300(f). (2) The Board-regulated institution's common equity tier 1 capital, tier 1 capital, and total capital without including the transitional amounts as defined in § 217.300(f).

TABLE 3 TO § 217.173—CAPITAL ADEQUACY

*	*	* * * * *
	(e)	(1) Common equity tier 1, tier 1 and total risk-based capital ratios reflecting the transition provisions described in § 217.300(f): (A) For the top consolidated group; and (2) For each depository institution subsidiary.
	(f)	Common equity tier 1, tier 1 and total risk-based capital ratios reflecting the full adoption of CECL: (1) For the top consolidated group; and (2) For each depository institution subsidiary.
*	*	* * * * *

* * * * *

TABLE 5[1] TO § 217.173—CREDIT RISK: GENERAL DISCLOSURES

Qualitative disclosures ...	(a)	The general qualitative disclosure requirement with respect to credit risk (excluding counterparty credit risk disclosed in accordance with Table 7 to § 217.173), including: (1) Policy for determining past due or delinquency status;

TABLE 5[1] TO § 217.173—CREDIT RISK: GENERAL DISCLOSURES—Continued

	(2) Policy for placing loans on nonaccrual; (3) Policy for returning loans to accrual status; (4) Definition of and policy for identifying impaired loans (for financial accounting purposes). (5) Description of the methodology that the entity uses to estimate its allowance for loan and lease losses or adjusted allowance for credit losses, as applicable, including statistical methods used where applicable; (6) Policy for charging-off uncollectible amounts; and (7) Discussion of the Board-regulated institution's credit risk management policy.
* * * * * * *	
(e)	By major industry or counterparty type: (1) Amount of impaired loans for which there was a related allowance under GAAP; (2) Amount of impaired loans for which there was no related allowance under GAAP; (3) Amount of loans past due 90 days and on nonaccrual; (4) Amount of loans past due 90 days and still accruing;[4] (5) The balance in the allowance for loan and lease losses or adjusted allowance for credit losses, as applicable, at the end of each period, disaggregated on the basis of the entity's impairment method. To disaggregate the information required on the basis of impairment methodology, an entity shall separately disclose the amounts based on the requirements in GAAP; and (6) Charge-offs during the period.
* * * * * * *	
(g)	Reconciliation of changes in ALLL or AACL, as applicable.[6]
* * * * * * *	

[1] Table 5 to § 217.173 does not cover equity exposures, which should be reported in Table 9.
[2] See, for example, ASC Topic 815–10 and 210–20, as they may be amended from time to time.
[3] Geographical areas may comprise individual countries, groups of countries, or regions within countries. A Board-regulated institution might choose to define the geographical areas based on the way the company's portfolio is geographically managed. The criteria used to allocate the loans to geographical areas must be specified.
[4] A Board-regulated institution is encouraged also to provide an analysis of the aging of past-due loans.
[5] The portion of the general allowance that is not allocated to a geographical area should be disclosed separately.
[6] The reconciliation should include the following: A description of the allowance; the opening balance of the allowance; charge-offs taken against the allowance during the period; amounts provided (or reversed) for estimated probable loan losses during the period; any other adjustments (for example, exchange rate differences, business combinations, acquisitions and disposals of subsidiaries), including transfers between allowances; and the closing balance of the allowance. Charge-offs and recoveries that have been recorded directly to the income statement should be disclosed separately.

* * * * *

Subpart G—Transition Provisions

■ 36. Add § 217.301 to subpart G to read as follows:

§ 217.301 Current expected credit losses (CECL) transition.

(a) *CECL transition provision.* (1) A Board-regulated institution may elect to use a CECL transition provision pursuant to this section only if the Board-regulated institution records a reduction in retained earnings due to the adoption of CECL as of the beginning of the fiscal year in which the Board-regulated institution adopts CECL.

(2) A Board-regulated institution that elects to use the CECL transition provision must use the CECL transition provision in the first Call Report or FR Y–9C that includes CECL filed by the Board-regulated institution after it adopts CECL.

(3) A Board-regulated institution that does not elect to use the CECL transition provision as of the first Call Report or FR Y–9C that includes CECL filed as described in paragraph (a)(2) of this section may not elect to use the CECL transition provision in subsequent reporting periods.

(b) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Transition period* means the three-year period beginning the first day of the fiscal year in which a Board-regulated institution adopts CECL.

(2) *CECL transitional amount* means the decrease net of any DTAs in the amount of a Board-regulated institution's retained earnings as of the beginning of the fiscal year in which the Board-regulated institution adopts CECL from the amount of the Board-regulated institution's retained earnings as of the closing of the fiscal year-end immediately prior to the Board-regulated institution's adoption of CECL.

(3) *DTA transitional amount* means the increase in the amount of a Board-regulated institution's DTAs arising from temporary differences as of the beginning of the fiscal year in which the Board-regulated institution adopts CECL from the amount of the Board-regulated institution's DTAs arising from temporary differences as of the closing of the fiscal year-end immediately prior to the Board-regulated institution's adoption of CECL.

(4) *AACL transitional amount* means the difference in the amount of a Board-regulated institution's AACL as of the beginning of the fiscal year in which the Board-regulated institution adopts CECL and the amount of the Board-regulated institution's ALLL as of the closing of the fiscal year-end immediately prior to the Board-regulated institution's adoption of CECL.

(5) *Eligible credit reserves transitional amount* means the increase in the amount of a Board-regulated institution's eligible credit reserves as of the beginning of the fiscal year in which the Board-regulated institution adopts CECL from the amount of the Board-regulated institution's eligible credit reserves as of the closing of the fiscal year-end immediately prior to the Board-regulated institution's adoption of CECL.

(c) *Calculation of CECL transition provision.* (1) For purposes of the election described in paragraph (a)(1) of this section, a Board-regulated institution must make the following adjustments in its calculation of regulatory capital ratios:

(i) Increase retained earnings by seventy-five percent of its CECL transitional amount during the first year

of the transition period, increase retained earnings by fifty percent of its CECL transitional amount during the second year of the transition period, and increase retained earnings by twenty-five percent of its CECL transitional amount during the third year of the transition period;

(ii) Decrease amounts of DTAs arising from temporary differences by seventy-five percent of its DTA transitional amount during the first year of the transition period, decrease amounts of DTAs arising from temporary differences by fifty percent of its DTA transitional amount during the second year of the transition period, and decrease amounts of DTAs arising from temporary differences by twenty-five percent of its DTA transitional amount during the third year of the transition period;

(iii) Decrease amounts of AACL by seventy-five percent of its AACL transitional amount during the first year of the transition period, decrease amounts of AACL by fifty percent of its AACL transitional amount during the second year of the transition period, and decrease amounts of AACL by twenty-five percent of its AACL transitional amount during the third year of the transition period;

(iv) Increase average total consolidated assets as reported on the Call Report or FR Y–9C for purposes of the leverage ratio by seventy-five percent of its CECL transitional amount during the first year of the transition period, increase average total consolidated assets as reported on the Call Report or FR Y–9C for purposes of the leverage ratio by fifty percent of its CECL transitional amount during the second year of the transition period, and increase average total consolidated assets as reported on the Call Report or FR Y–9C for purposes of the leverage ratio by twenty-five percent of its CECL transitional amount during the third year of the transition period;

(2) For purposes of the election described in paragraph (a)(1) of this section, an advanced approaches Board-regulated institution must make the following additional adjustments to its calculation of regulatory capital ratios:

(i) Increase total leverage exposure for purposes of the supplementary leverage ratio by seventy-five percent of its CECL transitional amount during the first year of the transition period, increase total leverage exposure for purposes of the supplementary leverage ratio by fifty percent of its CECL transitional amount during the second year of the transition period, and increase total leverage exposure for purposes of the supplementary leverage ratio by twenty-five percent of its CECL transitional amount during the third year of the transition period; and

(ii) An advanced approaches Board-regulated institution that has completed the parallel run process and has received notification from the Board pursuant to § 217.121(d) must decrease amounts of eligible credit reserves by seventy-five percent of its eligible credit reserves transitional amount during the first year of the transition period, decrease amounts of eligible credit reserves by fifty percent of its eligible credit reserves transitional amount during the second year of the transition provision, and decrease amounts of eligible credit reserves by twenty-five percent of its eligible credit reserves transitional amount during the third year of the transition period.

(3) An advanced approaches Board-regulated institution that has completed the parallel run process and has received notification from the Board pursuant to § 217.121(d), whose amount of expected credit loss exceeded its eligible credit reserves immediately prior to the adoption of CECL, and that has an increase in common equity tier 1 capital as of the beginning of the fiscal year in which it adopts CECL after including the first year portion of the CECL transitional amount must decrease its CECL transitional amount used in paragraph (c) of this section by the full amount of its DTA transitional amount.

(4) Notwithstanding any other requirement in this section, for purposes of this paragraph, in the event of a business combination involving a Board-regulated institution where one or both Board-regulated institutions have elected the treatment described in this section:

(i) If the acquirer Board-regulated institution (as determined under GAAP) elected the treatment described in this section, the acquirer Board-regulated institution must continue to use the transitional amounts (unaffected by the business combination) that it calculated as of the date that it adopted CECL through the end of its transition period.

(ii) If the acquired company (as determined under GAAP) elected the treatment described in this section, any transitional amount of the acquired company does not transfer to the resulting Board-regulated institution.

PART 223—TRANSACTIONS BETWEEN MEMBER BANKS AND THEIR AFFILIATES (REGULATION W)

■ 37. The authority citation for part 223 continues to read as follows:

Authority: 12 U.S.C. 371c(b)(1)(E), (b)(2)(A), and (f), 371c–1(e), 1828(j), 1468(a), and section 312(b)(2)(A) of the Dodd Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5412).

Subpart A—Introduction and Definitions

■ 38. In § 223.3, revise paragraph (d) to read as follows:

§ 223.3 What are the meanings of the other terms used in sections 23A and 23B and this part?

* * * * *

(d) *Capital stock and surplus* means the sum of:

(1) A member bank's tier 1 and tier 2 capital under the capital rule of the appropriate Federal banking agency, based on the member bank's most recent consolidated Report of Condition and Income filed under 12 U.S.C. 1817(a)(3);

(2) The balance of a member bank's allowance for loan and lease losses or adjusted allowance for credit losses, as applicable, not included in its tier 2 capital under the capital rule of the appropriate Federal banking agency, based on the member bank's most recent consolidated Report of Condition and Income filed under 12 U.S.C. 1817(a)(3); and

(3) The amount of any investment by a member bank in a financial subsidiary that counts as a covered transaction and is required to be deducted from the member bank's capital for regulatory capital purposes.

* * * * *

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

■ 39. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p–1831i, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3310, 3331–3351, 3906, 3907 and 3909; 15 U.S.C. 1681s, 1681w, 6801 and 6805.

■ 40. In § 225.127,

■ a. Remove ''§ 225.25(b)(6)'' wherever it appears and add in its place ''§ 225.28(b)(12)'' and remove ''§ 225.23'' in paragraphs (a) and (d) and add in its place ''§ 225.23 or § 225.24''; and

■ b. Revise paragraph (h).

The revision reads as follows:

§ 225.127 Investments in corporations or projects designed primarily to promote community welfare.

* * * * *

(h) For purposes of paragraph (f) of this section, five percent of the total consolidated capital stock and surplus of a bank holding company includes its total investment in projects described in

paragraph (f) of this section, when aggregated with similar types of investments made by depository institutions controlled by the bank holding company. The term total consolidated capital stock and surplus of the bank holding company means total equity capital and the allowance for loan and lease losses or adjusted allowance for credit losses, as applicable, based on the bank holding company's most recent FR Y–9C (Consolidated Financial Statements for Holding Companies) or FR Y–9SP (Parent Company Only Financial Statements for Small Holding Companies).

PART 252—ENHANCED PRUDENTIAL STANDARDS (REGULATION YY)

■ 41. The authority citation for part 252 continues to read as follows:

Authority: 12 U.S.C. 321–338a, 481–486, 1467a, 1818, 1828, 1831n, 1831o, 1831p–l, 1831w, 1835, 1844(b), 1844(c), 3101 *et seq.,* 3101 note, 3904, 3906–3909, 4808, 5361, 5362, 5365, 5366, 5367, 5368, 5371.

Subpart B—Company-Run Stress Test Requirements for Certain U.S. Banking Organizations With Total Consolidated Assets Over $10 Billion and Less Than $50 Billion

■ 42. In § 252.12, revise paragraph (m) to read as follows:

§ 252.12 Definitions.

* * * * *

(m) *Provision for credit losses* means:

(1) Until December 31, 2019:

(i) With respect to a bank holding company, savings and loan holding company, or state member bank that has not adopted the current expected credit losses methodology under U.S. generally accepted accounting principles (GAAP), the provision for loan and lease losses as reported on the FR Y–9C (and as would be reported on the FR Y–9C or Call Report, as appropriate, in the current stress test cycle); and,

(ii) With respect to a bank holding company, savings and loan holding company, or state member bank that has adopted the current expected credit losses methodology under GAAP, the provision for loan and lease losses, as would be calculated and reported on the FR Y–9C or Call Report, as appropriate, by a bank holding company, savings and loan holding company, or state member bank that has not adopted the current expected credit losses methodology under GAAP; and

(2) Beginning January 1, 2020:

(i) With respect to a covered company that has adopted the current expected credit losses methodology under GAAP, the provision for credit losses, as would be reported by the bank holding company, savings and loan holding company, or state member bank on the FR Y–9C or Call Report, as appropriate, in the current stress test cycle; and

(ii) With respect to a bank holding company, savings and loan holding company, or state member bank that has not adopted the current expected credit losses methodology under GAAP, the provision for loan and lease losses as would be reported by the bank holding company, savings and loan holding company, or state member bank on the FR Y–9C or Call Report, as appropriate, in the current stress test cycle.

* * * * *

■ 43. In § 252.15, revise paragraph (a)(1) and (2) to read as follows:

§ 252.15 Methodologies and practices.

(a) * * *

(1) Losses, pre-provision net revenue, provision for credit losses, and net income; and

(2) The potential impact on the regulatory capital levels and ratios applicable to the covered bank, and any other capital ratios specified by the Board, incorporating the effects of any capital action over the planning horizon and maintenance of an allowance for loan losses or adjusted allowance for credit losses, as appropriate, for credit exposures throughout the planning horizon.

* * * * *

■ 44. In § 252.16, revise paragraph (b)(3) to read as follows:

§ 252.16 Reports of stress test results.

* * * * *

(b) * * *

(3) For each quarter of the planning horizon, estimates of aggregate losses, pre-provision net revenue, provision for credit losses, net income, and regulatory capital ratios;

* * * * *

■ 45. In § 252.17, revise paragraphs (b)(1)(iii)(C), (b)(3)(iii)(C), and (c)(1) to read as follows:

§ 252.17 Disclosure of stress test results.

* * * * *

(b) * * *

(1) * * *

(iii) * * *

(C) Provision for credit losses;

* * * * *

(3) * * *

(iii) * * *

(C) Provision for credit losses;

* * * * *

(c) * * *

(1) The disclosure of aggregate losses, pre-provision net revenue, provision for credit losses, and net income that is required under paragraph (b) of this section must be on a cumulative basis over the planning horizon.

* * * * *

Subpart E—Supervisory Stress Test Requirements for U.S. Bank Holding Companies with $50 Billion or More in Total Consolidated Assets and Nonbank Financial Companies Supervised by the Board

■ 46. In § 252.42, revise paragraph (l) to read as follows:

§ 252.42 Definitions.

* * * * *

(l) *Provision for credit losses* means:

(1) Until December 31, 2019:

(i) With respect to a covered company that has not adopted the current expected credit losses methodology under U.S. generally accepted accounting principles (GAAP), the provision for loan and lease losses as reported on the FR Y–9C (and as would be reported on the FR Y–9C in the current stress test cycle); and

(ii) With respect to a covered company that has adopted the current expected credit losses methodology under GAAP, the provision for loan and lease losses, as would be calculated and reported on the FR Y–9C by a covered company that has not adopted the current expected credit losses methodology under GAAP; and

(2) Beginning January 1, 2020:

(i) With respect to a covered company that has adopted the current expected credit losses methodology under GAAP, the provision for credit losses, as would be reported by the covered company on the FR Y–9C in the current stress test cycle; and,

(ii) With respect to a covered company that has not adopted the current expected credit losses methodology under GAAP, the provision for loan and lease losses as would be reported by the covered company on the FR Y–9C in the current stress test cycle.

* * * * *

■ 47. In § 252.45, revise paragraph (b)(2) to read as follows:

§ 252.45 Data and information required to be submitted in support of the Board's analyses.

* * * * *

(b) * * *

(2) Project a company's pre-provision net revenue, losses, provision for credit losses, and net income; and pro forma capital levels, regulatory capital ratios, and any other capital ratio specified by

the Board under the scenarios described in § 252.44(b).

* * * * *

Subpart F—Company-Run Stress Test Requirements for U.S. Bank Holding Companies with $50 Billion or More in Total Consolidated Assets and Nonbank Financial Companies Supervised by the Board

■ 48. In § 252.52, revise paragraph (m) to read as follows:

§ 252.52 Definitions.

* * * * *

(m) *Provision for credit losses* means:

(1) Until December 31, 2019:

(i) With respect to a covered company that has not adopted the current expected credit losses methodology under GAAP, the provision for loan and lease losses as reported on the FR Y–9C (and as would be reported on the FR Y–9C in the current stress test cycle); and

(ii) With respect to a covered company that has adopted the current expected credit losses methodology under GAAP, the provision for loan and lease losses, as would be calculated and reported on the FR Y–9C by a covered company that has not adopted the current expected credit losses methodology under GAAP; and

(2) Beginning January 1, 2020:

(i) With respect to a covered company that has adopted the current expected credit losses methodology under GAAP, the provision for credit losses, as would be reported by the covered company on the FR Y–9C in the current stress test cycle; and

(ii) With respect to a covered company that has not adopted the current expected credit losses methodology under GAAP, the provision for loan and lease losses as would be reported by the covered company on the FR Y–9C in the current stress test cycle.

* * * * *

■ 49. In § 252.56, revise paragraph (a)(1) and (2) to read as follows:

§ 252.56 Methodologies and practices.

(a) * * *

(1) Losses, pre-provision net revenue, provision for credit losses, and net income; and

(2) The potential impact on the regulatory capital levels and ratios applicable to the covered bank, and any other capital ratios specified by the Board, incorporating the effects of any capital action over the planning horizon and maintenance of an allowance for loan losses or adjusted allowance for credit losses, as appropriate, for credit exposures throughout the planning horizon.

* * * * *

■ 50. In § 252.58, revise paragraphs (b)(2), (b)(3)(ii), and (c)(1)(ii) to read as follows:

§ 252.58 Disclosure of stress test results.

* * * * *

(b) * * *

(2) A general description of the methodologies used in the stress test, including those employed to estimate losses, revenues, provision for credit losses, and changes in capital positions over the planning horizon.

(3) * * *

(ii) Provision for credit losses, realized losses or gains on available-for-sale and held-to-maturity securities, trading and counterparty losses or gains;

* * * * *

(c) * * *

(1) * * *

(i) * * *

(ii) Provision for credit losses, realized losses/gains on available-for-sale and held-to-maturity securities, trading and counterparty losses, and other losses or gain;

* * * * *

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Chapter III

Authority and Issuance

For the reasons stated in the preamble, the Federal Deposit Insurance Corporation proposes to amend chapter III of Title 12, Code of Federal Regulations as follows:

PART 324—CAPITAL ADEQUACY OF FDIC-SUPERVISED INSTITUTIONS

■ 51. 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).

■ 52. Section 324.2 is amended by:

■ a. Adding in alphabetical order a definition for ''adjusted allowances for credit losses (AACL)'';

■ b. Revising the definition of ''carrying value'';

■ c. Adding in alphabetical order a definition for ''Current Expected Credit Losses (CECL)''; and

■ d. Revising the definitions of ''eligible credit reserves'' and ''identified losses'' and paragraph (2) of the definition of ''standardized total risk-weighted assets''.

The additions and revisions read as follows:

§ 324.2 Definitions.

* * * * *

Adjusted allowances for credit losses (AACL) means, with respect to an FDIC-supervised institution that has adopted CECL, valuation allowances that have been established through a charge against earnings or retained earnings for expected credit losses on financial assets measured at amortized cost and a lessor's net investment in leases that have been established to reduce the amortized cost basis of the assets to amounts expected to be collected as determined in accordance with GAAP. For purposes of this part, adjusted allowances for credit losses include allowances for expected credit losses on off-balance sheet credit exposures not accounted for as insurance as determined in accordance with GAAP. Adjusted allowances for credit losses exclude ''allocated transfer risk reserves'' and allowances created that reflect credit losses on purchased credit deteriorated assets and available-for-sale debt securities.

* * * * *

Carrying value means, with respect to an asset, the value of the asset on the balance sheet of the FDIC-supervised institution as determined in accordance with GAAP. For all assets other than available-for-sale debt securities or purchased credit deteriorated assets, the carrying value is not reduced by any associated credit loss allowance that is determined in accordance with GAAP.

* * * * *

Current Expected Credit Losses (CECL) means the current expected credit losses methodology under GAAP.

* * * * *

Eligible credit reserves means:

(1) For an FDIC-supervised institution that has not adopted CECL, all general allowances that have been established through a charge against earnings to cover estimated credit losses associated with on- or off-balance sheet wholesale and retail exposures, including the ALLL associated with such exposures, but excluding allocated transfer risk reserves established pursuant to 12 U.S.C. 3904 and other specific reserves created against recognized losses; and

(2) For an FDIC-supervised institution that has adopted CECL, all general allowances that have been established through a charge against earnings or

retained earnings to cover expected credit losses associated with on- or off-balance sheet wholesale and retail exposures, including AACL associated with such exposures. Eligible credit reserves exclude allocated transfer risk reserves established pursuant to 12 U.S.C. 3904, allowances that reflect credit losses on purchased credit deteriorated assets and available-for-sale debt securities, and other specific reserves created against recognized losses.

* * * * *

Identified losses means:

(1) When measured as of the date of examination of an FDIC-supervised institution, those items that have been determined by an evaluation made by a state or Federal examiner as of that date to be chargeable against income, capital and/or general valuation allowances such as the allowances for loan and lease losses (examples of identified losses would be assets classified loss, off-balance sheet items classified loss, any provision expenses that are necessary for the FDIC-supervised institution to record in order to replenish its general valuation allowances to an adequate level, liabilities not shown on the FDIC-supervised institution's books, estimated losses in contingent liabilities, and differences in accounts which represent shortages) or the adjusted allowances for credit losses; and

(2) When measured as of any other date, those items:

(i) That have been determined—

(A) By an evaluation made by a state or Federal examiner at the most recent examination of an FDIC-supervised institution to be chargeable against income, capital and/or general valuation allowances; or

(B) By evaluations made by the FDIC-supervised institution since its most recent examination to be chargeable against income, capital and/or general valuation allowances; and

(ii) For which the appropriate accounting entries to recognize the loss have not yet been made on the FDIC-supervised institution's books nor has the item been collected or otherwise settled.

* * * * *

Standardized total risk-weighted assets * * *

(2) Any amount of the FDIC-supervised institution's allowance for loan and lease losses or adjusted allowance for credit losses, as applicable, that is not included in tier 2 capital and any amount of ''allocated transfer risk reserves.''

* * * * *

§ 324.10 [Amended]

■ 53. Section 324.10(c)(3)(ii)(A) is amended by removing the words ''allowance for loan and lease losses'' and adding in their place the words ''allowance for loan and lease losses or adjusted allowance for credit losses, as applicable,''.

§ 324.20 [Amended]

■ 54a. In § 324.20, in paragraph (d)(3), remove the first occurrence of the word ''ALLL'' and add in its place the words ''ALLL or AACL, as applicable,'' and in the second occurrence ''ALLL or AACL, as applicable'' is added in its place.

§ 324.22 [Amended]

■ 54b. In § 324.22, in footnote 23 at the paragraph (c) subject heading, remove the word ''ALLL'' and add in its place the words ''ALLL or AACL, as applicable,''.

§ 324.63 [Amended]

■ 55a. In Table 5 to § 324.63, in paragraph (a)(5), remove the phrase ''allowance for loan and lease losses,'' and in paragraph (e)(5) remove the phrase ''allowance for loan and lease losses'' and add in their place ''allowance for loan and lease losses or adjusted allowance for credit losses, as applicable,'' and in paragraph (g) by removing ''ALLL'' and adding in its place ''ALLL or AACL, as applicable''.

§ 324.124 [Amended]

■ 55b. In § 324.124, in paragraph (a), remove the word ''ALLL'' and add in its place the words ''ALLL or AACL, as applicable,'' and in paragraph (b) remove the word ''ALLL'' and add in its place ''ALLL or AACL, as applicable''.

■ 56. Section 324.173 is amended:

■ a. In Table 2, by adding paragraph (e);

■ b. In Table 3, by revising paragraph (e), redesignating paragraph (f) as paragraph (g), and adding a new paragraph (f); and

■ c. In Table 5 to § 324.173, in paragraph (a)(5), remove the phrase ''allowance for loan and lease losses,'' and in paragraph (e)(5) remove the phrase ''allowance for loan and lease losses'' and add in their place ''allowance for loan and lease losses or adjusted allowance for credit losses, as applicable,'' and in paragraph (g) by removing ''ALLL'' and adding in its place ''ALLL or AACL, as applicable''.

The additions and revisions read as set forth below.

§ 324.173 Disclosures by certain advanced approaches FDIC-supervised institutions.

* * * * *

TABLE 2 TO § 324.173—CAPITAL STRUCTURE

*	*	* * * * *
	(e)	(1) Whether the FDIC-supervised institution has elected to phase in recognition of the transitional amounts as defined in § 324.300(f). (2) The FDIC-supervised institution's common equity tier 1 capital, tier 1 capital, and total capital without including the transitional amounts as defined in § 324.300(f).

TABLE 3 TO § 324.173—CAPITAL ADEQUACY

*	*	* * * * *
	(e)	(1) Common equity tier 1, tier 1 and total risk-based capital ratios reflecting the transition provisions described in § 324.300(f): (A) For the top consolidated group; and (2) For each depository institution subsidiary.
	(f)	Common equity tier 1, tier 1 and total risk-based capital ratios reflecting the full adoption of CECL: (1) For the top consolidated group; and (2) For each depository institution subsidiary.
*	*	* * * * *

* * * * *

Subpart G—Transition Provisions

■ 58. Add § 324.301 to subpart G to read as follows:

§ 324.301 Current expected credit losses (CECL) transition.

(a) *CECL transition provision criteria.* (1) An FDIC-supervised institution may elect to use a CECL transition provision pursuant to this section only if the FDIC-supervised institution records a reduction in retained earnings due to the adoption of CECL as of the beginning of the fiscal year in which the FDIC-supervised institution adopts CECL.

(2) An FDIC-supervised institution that elects to use the CECL transition provision must use the CECL transition provision in the first Call Report filed by the FDIC-supervised institution after it adopts CECL.

(3) An FDIC-supervised institution that does not elect to use the CECL transition provision as of the first Call Report filed as described in paragraph (a)(2) of this section may not elect to use the CECL transition provision in subsequent reporting periods.

(b) *Definitions.* For purposes of this section, the following definitions apply:

(1) *Transition period* means the three-year period beginning the first day of the fiscal year in which an FDIC-supervised institution adopts CECL.

(2) *CECL transitional amount* means the decrease net of any DTAs in the amount of an FDIC-supervised institution's retained earnings as of the beginning of the fiscal year in which the FDIC-supervised institution adopts CECL from the amount of the FDIC-supervised institution's retained earnings as of the closing of the fiscal year-end immediately prior to the FDIC-supervised institution's adoption of CECL.

(3) *DTA transitional amount* means the increase in the amount of an FDIC-supervised institution's DTAs arising from temporary differences as of the beginning of the fiscal year in which the FDIC-supervised institution adopts CECL from the amount of the FDIC-supervised institution's DTAs arising from temporary differences as of the closing of the fiscal year-end immediately prior to the FDIC-supervised institution's adoption of CECL.

(4) *AACL transitional amount* means the difference in the amount of an FDIC-supervised institution's AACL as of the beginning of the fiscal year in which the FDIC-supervised institution adopts CECL and the amount of the FDIC-supervised institution's ALLL as of the closing of the fiscal year-end immediately prior to the FDIC-supervised institution's adoption of CECL.

(5) *Eligible credit reserves transitional amount* means the increase in the amount of a FDIC-supervised institution's eligible credit reserves as of the beginning of the fiscal year in which the FDIC-supervised institution adopts CECL from the amount of the FDIC-supervised institution's eligible credit reserves as of the closing of the fiscal year-end immediately prior to the FDIC-supervised institution's adoption of CECL.

(c) *Calculation of CECL transition provision.* (1) For purposes of the election described in paragraph (a)(1) of this section, an FDIC-supervised institution must make the following adjustments in its calculation of regulatory capital ratios:

(i) Increase retained earnings by seventy-five percent of its CECL transitional amount during the first year of the transition period, increase retained earnings by fifty percent of its CECL transitional amount during the second year of the transition period, and increase retained earnings by twenty-five percent of its CECL transitional amount during the third year of the transition period;

(ii) Decrease amounts of DTAs arising from temporary differences by seventy-five percent of its DTA transitional amount during the first year of the transition period, decrease amounts of DTAs arising from temporary differences by fifty percent of its DTA transitional amount during the second year of the transition period, and decrease amounts of DTAs arising from temporary differences by twenty-five percent of its DTA transitional amount during the third year of the transition period;

(iii) Decrease amounts of AACL by seventy-five percent of its AACL transitional amount during the first year of the transition period, decrease amounts of AACL by fifty percent of its AACL transitional amount during the second year of the transition period, and decrease amounts of AACL by twenty-five percent of its AACL transitional amount during the third year of the transition period;

(iv) Increase average total consolidated assets as reported on the Call Report for purposes of the leverage ratio by seventy-five percent of its CECL transitional amount during the first year of the transition period, increase average total consolidated assets as reported on the Call Report for purposes of the leverage ratio by fifty percent of its CECL transitional amount during the second year of the transition period, and increase average total consolidated assets as reported on the Call Report for purposes of the leverage ratio by twenty-five percent of its CECL transitional amount during the third year of the transition period;

(2) For purposes of the election described in paragraph (a)(1) of this section, an advanced approaches FDIC-supervised institution must make the following additional adjustments to its calculation of regulatory capital ratios:

(i) Increase total leverage exposure for purposes of the supplementary leverage ratio by seventy-five percent of its CECL transitional amount during the first year of the transition period, increase total leverage exposure for purposes of the supplementary leverage ratio by fifty percent of its CECL transitional amount during the second year of the transition period, and increase total leverage exposure for purposes of the supplementary leverage ratio by twenty-five percent of its CECL transitional amount during the third year of the transition period; and

(ii) An advanced approaches FDIC-supervised institution that has completed the parallel run process and has received notification from the FDIC pursuant to § 324.121(d) must decrease amounts of eligible credit reserves by seventy-five percent of its eligible credit reserves transitional amount during the first year of the transition period, decrease amounts of eligible credit reserves by fifty percent of its eligible credit reserves transitional amount during the second year of the transition provision, and decrease amounts of eligible credit reserves by twenty-five percent of its eligible credit reserves transitional amount during the third year of the transition period.

(3) An advanced approaches FDIC-supervised institution that has completed the parallel run process and has received notification from the FDIC pursuant to § 324.121(d), whose amount of expected credit loss exceeded its eligible credit reserves immediately prior to the adoption of CECL, and that has an increase in common equity tier 1 capital as of the beginning of the fiscal year in which it adopts CECL after including the first year portion of the CECL transitional amount must decrease its CECL transitional amount used in paragraph (c) of this section by the full amount of its DTA transitional amount.

(4) Notwithstanding any other requirement in this section, for purposes of this paragraph, in the event of a business combination involving an FDIC-supervised institution where one or both FDIC-supervised institutions

have elected the treatment described in this section:

(i) If the acquirer FDIC-supervised institution (as determined under GAAP) elected the treatment described in this section, the acquirer FDIC-supervised institution must continue to use the transitional amounts (unaffected by the business combination) that it calculated as of the date that it adopted CECL through the end of its transition period.

(ii) If the acquired insured depository institution (as determined under GAAP) elected the treatment described in this section, any transitional amount of the acquired insured depository institution does not transfer to the resulting FDIC-supervised institution.

PART 325—CAPITAL MAINTENANCE

■ 59. The authority citation for part 325 continues to read as follows:

Authority: 12 U.S.C. 5365(i)(2); 12 U.S.C. 5412(b)(2)(C); 12 U.S.C. 1818, 12 U.S.C. 1819(a)(Tenth), 12 U.S.C. 1831*o,* and 12 U.S.C. 1831p–1.

Subpart C—Annual Stress Test

■ 60. In § 325.2, paragraph (g) is revised to read as follows:

§ 325.2 Definitions.

* * * * *

(g) *Provision for credit losses* means:

(1) Until December 31, 2019:

(i) With respect to a state nonmember bank or state savings association that has not adopted the current expected credit losses methodology under U.S. generally accepted accounting principles (GAAP), the provision for loan and lease losses as reported on the Call Report in the current stress test cycle; and,

(ii) With respect to a state nonmember bank or state savings association that has adopted the current expected credit losses methodology under GAAP, the provision for loan and lease losses, as would be calculated and reported on the Call Report by a state nonmember bank or state savings association that has not adopted the current expected credit losses methodology under GAAP; and

(2) Beginning January 1, 2020:

(i) With respect to a state nonmember bank or state savings association that has adopted the current expected credit losses methodology under GAAP, the provision for credit losses, as reported in the Call Report in the current stress test cycle; and

(ii) With respect to a state nonmember bank or state savings association that has not adopted the current expected credit losses methodology under GAAP, the provision for loan and lease losses as would be reported in the Call Report in the current stress test cycle.

* * * * *

■ 61. In § 325.5, paragraph (a)(1) and (2) are revised to read as follows:

§ 325.5 Methodologies and practices.

(a) * * *

(1) Pre-provision net revenues, losses, provision for credit losses, and net income; and

(2) The potential impact on the regulatory capital levels and ratios applicable to the covered bank, and any other capital ratios specified by the Corporation, incorporating the effects of any capital action over the planning horizon and maintenance of an allowance for loan losses or adjusted allowance for credit losses, as appropriate, for credit exposures throughout the planning horizon.

* * * * *

■ 62. In § 325.6, paragraph (b)(1) is revised to read as follows:

§ 325.6 Required reports of stress test results to the FDIC and the Board of Governors of the Federal Reserve System.

* * * * *

(b) * * *

(1) The reports required under paragraph (a) of this section must include under the baseline scenario, adverse scenario, severely adverse scenario and any other scenario required by the FDIC under this subpart, a description of the types of risks being included in the stress test, a summary description of the methodologies used in the stress test, and, for each quarter of the planning horizon, estimates of aggregate losses, pre-provision net revenue, provision for credit losses, net income, and pro forma capital ratios (including regulatory and any other capital ratios specified by the FDIC). In addition, the report must include an explanation of the most significant causes for the changes in regulatory capital ratios and any other information required by the FDIC.

* * * * *

■ 63. In § 325.7, revise paragraphs (c)(3) and (d)(1) to read as follows:

§ 325.7 Publication of stress test results.

* * * * *

(c) * * *

(3) Estimates of aggregate losses, pre-provision net revenue, provision for credit losses, net income, and pro forma capital ratios (including regulatory and any other capital ratios specified by the FDIC); and

* * * * *

(d) * * *

(1) The disclosure of aggregate losses, pre-provision net revenue, provisions for credit losses, and net income under this section must be on a cumulative basis over the planning horizon.

* * * * *

PART 327—ASSESSMENTS

■ 64. The authority citation for part 327 continues to read as follows:

Authority: 12 U.S.C. 1441, 1813, 1815, 1817–19, 1821.

Subpart A—In General

§ 327.16 [Amended]

■ 65. Section 327.16 is amended in footnote 2 to the table in paragraph (a)(1)(ii) by removing the words ''allowance for loan and lease financing receivable losses (ALLL)'' and adding in their place the words ''allowance for loan and lease financing receivable losses (ALLL) or allowance for credit losses, as applicable''.

PART 347—INTERNATIONAL BANKING

■ 66. The authority citation for Part 347 continues to read as follows:

Authority: 12 U.S.C. 1813, 1815, 1817, 1819, 1820, 1828, 3103, 3104, 3105, 3108, 3109; Pub L. No. 111–203, section 939A, 124 Stat. 1376, 1887 (July 21, 2010) (codified 15 U.S.C. 78o–7 note).

Subpart C—International Lending

■ 67. In § 347.303, revise paragraphs (c)(2) and (4) to read as follows:

§ 347.303 Allocated transfer risk reserve.

* * * * *

(c) * * *

(2) *Separate accounting.* A banking institution shall account for an ATRR separately from the Allowance for Loan and Lease Losses or allowance for credit losses, as applicable, and shall deduct the ATRR from ''gross loans and leases'' to arrive at ''net loans and lease.'' The ATRR must be established for each asset subject to the ATRR in the percentage amount specified.

* * * * *

(4) *Alternative accounting treatment.* A banking institution need not establish an ATRR if it writes down in the period in which the ATRR is required, or has written down in prior periods, the value of the specified international assets in the requisite amount for each such asset. For purposes of this paragraph (c)(4), international assets may be written down by a charge to the Allowance for Loan and Lease Losses or allowance for credit losses, as applicable, or a reduction in the principal amount of the asset by application of interest payments or other collections on the

asset; provided, that only those international assets that may be charged to the Allowance for Loan and Lease Losses or allowance for credit losses, as applicable, pursuant to U.S. generally accepted accounting principles may be written down by a charge to the Allowance for Loan and Lease Losses or allowance for credit losses, as applicable. However, the Allowance for Loan and Lease Losses or allowance for credit losses, as applicable, must be replenished in such amount necessary to restore it to a level which adequately provides for the estimated losses inherent in the banking institution's loan and lease portfolio.

* * * * *

PART 390—REGULATIONS TRANSFERRED FROM THE OFFICE OF THRIFT SUPERVISION

■ 68. The authority citation for part 390 continues to read as follows:

Authority: 12 U.S.C. 1819.

Subpart T—Accounting Requirements

■ 69. In § 390.384, in the appendix in section II, revise paragraph 11, and in paragraph 12, remove the phrase ''provision for loan losses'' and add in its place ''provision for loan losses or provision for credit losses, as applicable''.

The revision reads as follows:

§ 390.384 Financial statements for conversions, SEC filings, and offering circulars.

* * * * *

Appendix to § 390.384 * * *

II. Income Statement

* * * * *

11. Provision for loan losses or provision for credit losses, as applicable.

* * * * *

Dated: December 18, 2018.

William A. Rowe,

Chief Risk Officer.

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

Ann E. Misback,

Secretary of the Board.

Dated at Washington, DC, on December 18, 2018.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 2018–28281 Filed 2–13–19; 8:45 am]

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Part IV

Bureau of Consumer Financial Protection

12 CFR Part 1041

Payday, Vehicle Title, and Certain High-Cost Installment Loans and Delay of Compliance Date; Proposed Rules

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1041

[Docket No. CFPB–2019–0006]

RIN 3170–AA80

Payday, Vehicle Title, and Certain High-Cost Installment Loans

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is proposing to rescind certain provisions of the regulation promulgated by the Bureau in November 2017 governing Payday, Vehicle Title, and Certain High-Cost Installment Loans (2017 Final Rule or Rule). The provisions of the Rule which the Bureau proposes to rescind provide that it is an unfair and abusive practice for a lender to make a covered short-term or longer-term balloon-payment loan, including payday and vehicle title loans, without reasonably determining that consumers have the ability to repay those loans according to their terms; prescribe mandatory underwriting requirements for making the ability-to-repay determination; exempt certain loans from the mandatory underwriting requirements; and establish related definitions, reporting, and recordkeeping requirements. This proposal is related to another proposal, published separately in this issue of the **Federal Register**, seeking comment on whether the Bureau should delay the August 19, 2019 compliance date for these portions of the 2017 Final Rule.

DATES: Comments must be received on or before May 15, 2019.

ADDRESSES: You may submit comments, identified by Docket No. CFPB–2019–0006 or RIN 3170–AA80, by any of the following methods:

- *Electronic: https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: 2019-NPRM-PaydayReconsideration@cfpb.gov.* Include Docket No. CFPB–2019–0006 or RIN 3170–AA80 in the subject line of the message.
- *Mail/Hand Delivery/Courier:* Comment Intake, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552.

Instructions: The Bureau encourages the early submission of comments. All submissions should include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to *https://www.regulations.gov.* In addition, comments will be available for public inspection and copying at 1700 G Street NW, Washington, DC 20552, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning 202–435–7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Proprietary information or sensitive personal information, such as account numbers, Social Security numbers, or names of other individuals, should not be included. Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Eliott C. Ponte, Attorney-Advisor; Amy Durant, Lawrence Lee, or Adam Mayle, Counsels; or Kristine M. Andreassen, Senior Counsel, Office of Regulations, at 202–435–7700. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Summary of the Proposed Rule

On October 5, 2017, the Bureau issued the 2017 Final Rule establishing consumer protection regulations for payday loans, vehicle title loans, and certain high-cost installment loans, relying on authorities under Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act or the Act).[1] The Rule was published in the **Federal Register** on November 17, 2017.[2] It became effective on January 16, 2018, although most provisions (12 CFR 1041.2 through 1041.10, 1041.12, and 1041.13) have a compliance date of August 19, 2019.[3] On January 16, 2018, the Bureau issued a statement announcing its intention to engage in rulemaking to reconsider the 2017 Final Rule.[4] A legal challenge to the Rule was filed on April 9, 2018, and is pending in the United States District Court for the Western District of Texas.[5] On October 26, 2018, the Bureau issued a subsequent statement announcing it expected to issue notices of proposed rulemaking (NPRMs) to reconsider certain provisions of the 2017 Final Rule and to address the Rule's compliance date.[6] This is one of those proposals; the other is published separately in this issue of the **Federal Register**.

The 2017 Final Rule addressed two discrete topics. First, the Rule contained a set of provisions with respect to the underwriting of covered short-term and longer-term balloon-payment loans, including payday and vehicle title loans, and related recordkeeping and reporting requirements.[7] These provisions are referred to herein as the ''Mandatory Underwriting Provisions'' of the 2017 Final Rule. Second, the Rule contained a set of provisions, applicable to the same set of loans and also to certain high-cost installment loans,[8] establishing certain requirements and limitations with respect to attempts to withdraw payments on the loans from consumers' checking or other accounts.[9] These provisions are referred to herein as the ''Payment Provisions'' of the 2017 Final Rule.

The Bureau is proposing in this NPRM to rescind the Mandatory Underwriting Provisions of the 2017 Final Rule. Specifically, the Bureau is proposing to rescind (1) the ''identification'' provision which states that it is an unfair and abusive practice for a lender to make covered short-term

[1] Public Law 111–203, 124 Stat. 1376 (2010).

[2] 82 FR 54472 (Nov. 17, 2017). The Bureau released its proposal regarding payday, vehicle title, and certain high-cost installment for public comment on June 2, 2016 (2016 Proposal). 81 FR 47864 (July 22, 2016).

The Bureau received well over one million comments on the 2016 Proposal. As the Bureau noted in the 2017 Final Rule, these comments included a large number of positive accounts of how people successfully used such loans to address shortfalls or cope with emergencies and concerns about the possibility of access to payday loans being removed. 82 FR 54472, 54559. There were, however, a significant though smaller number of comments discussing negative experiences from individual consumers or persons concerned about the impact payday loans have had on consumers whom they knew. *Id.* at 54559–60.

[3] *Id.* at 54814.

[4] *See* Bureau of Consumer Fin. Prot., *Statement on Payday Rule* (Jan. 16, 2018), *https://www.consumerfinance.gov/about-us/newsroom/cfpb-statement-payday-rule/.*

[5] *Cmty. Fin. Serv. Ass'n of Am.* v. *Consumer Fin. Prot. Bureau,* No. 1:18–cv–295 (W.D. Tex.). On November 6, 2018, the court issued an order staying the August 19, 2019 compliance date of the Rule pending further order of the court. *See id.,* ECF No. 53. The litigation is currently stayed. *See id.,* ECF No. 29.

[6] *See* Bureau of Consumer Fin. Prot., *Public Statement Regarding Payday Rule Reconsideration and Delay of Compliance Date* (Oct. 26, 2018), *https://www.consumerfinance.gov/about-us/newsroom/public-statement-regarding-payday-rule-reconsideration-and-delay-compliance-date/.*

[7] 12 CFR 1041.4 through 1041.6, 1041.10, 1041.11, and portions of 1041.12.

[8] The 2017 Final Rule refers to all three of these categories of loans together as covered loans. 12 CFR 1041.3(b).

[9] 12 CFR 1041.7 through 1041.9, and portions of 1041.12.

loans or covered longer-term balloon-payment loans without reasonably determining that consumers will have the ability to repay the loans according to their terms;[10] (2) the ''prevention'' provision which establishes specific underwriting requirements for these loans to prevent the unfair and abusive practice;[11] (3) the ''conditional exemption'' provision for certain covered short-term loans;[12] (4) the ''furnishing'' provisions which require lenders making covered short-term or longer-term balloon-payment loans to furnish certain information regarding such loans to registered information systems (RISes) and create a process for registering such information systems;[13] and (5) those portions of the recordkeeping provisions related to the mandatory underwriting requirements.[14] The Bureau also is proposing to rescind the Official Interpretations relating to these provisions.

As explained below, the Bureau now initially determines that the evidence underlying the identification of the unfair and abusive practice in the Mandatory Underwriting Provisions of the 2017 Final Rule is not sufficiently robust and reliable to support that determination, in light of the impact those provisions will have on the market for covered short-term and longer-term balloon-payment loans, and the ability of consumers to obtain such loans, among other things. The Bureau is not aware of any additional evidence that would provide the support needed for the key findings that are essential to such a determination and does not believe it is cost-effective for itself and for lenders and borrowers to conduct the necessary research to try to develop those key findings. The Bureau is therefore proposing to rescind those identifications. The Bureau is also now initially determining that its approach for unfairness and abusiveness was problematic and is proposing a different approach to determining whether consumers can reasonably avoid the substantial injury that the Rule determined is caused or likely to be caused by the failure to underwrite these loans,[15] whether such injury is outweighed by countervailing benefits to consumers and to competition,[16] and whether the failure to underwrite takes unreasonable advantage of particular consumer vulnerabilities.[17] Based on its reconsideration of these issues, the Bureau is proposing to rescind the Mandatory Underwriting Provisions in their entirety.

The Bureau is not proposing to reconsider the Payment Provisions of the 2017 Final Rule, and the Payment Provisions are outside the scope of this NPRM. However, the Bureau has received a rulemaking petition to exempt debit card payments from the Rule's Payment Provisions. The Bureau has also received informal requests related to various aspects of the Payment Provisions or the Rule as a whole, including requests to exempt certain types of lenders or loan products from the Rule's coverage and to delay the compliance date for the Payment Provisions. The Bureau intends to examine these issues and if the Bureau determines that further action is warranted, the Bureau will commence a separate rulemaking initiative (such as by issuing a request for information (RFI) or an advance notice of proposed rulemaking). In addition, the Bureau intends to use its existing market monitoring authority to gather data on whether the requirement in the 2017 Final Rule that lenders provide consumers with ''unusual withdrawal'' notices before the lenders make certain withdrawal attempts are made affects the number of unsuccessful withdrawals made from consumers' accounts.[18]

II. Background

The **SUPPLEMENTARY INFORMATION** accompanying the 2017 Final Rule contains background on the payday and vehicle title markets[19] and on the consumers who use these products.[20] The **SUPPLEMENTARY INFORMATION** also contains findings of the impacts that the Mandatory Underwriting Provisions of the 2017 Final Rule would have on consumers and covered persons.[21] The Bureau does not here repeat all of that information and those findings. Rather, this section summarizes the information and findings from the 2017 Final Rule that the Bureau views as most relevant to the Bureau's decision to propose rescinding the Mandatory Underwriting Provisions.

A. The Market for Short-Term and Balloon-Payment Loans

As the Bureau observed in the 2017 Final Rule, consumers living paycheck to paycheck and with little to no savings often use credit as a means of coping with financial shortfalls.[22] These shortfalls may be due to mismatched timing between income and expenses, income volatility, unexpected expenses or income shocks, or expenses that simply exceed income.[23] According to a recent survey conducted by the Board of Governors of the Federal Reserve System (Board), over one-quarter of adults are either just getting by or finding it difficult to get by; a similar percentage skipped necessary medical care in 2017 due to being unable to afford the cost. In addition, 40 percent of adults reported they would either be unable to cover an emergency expense costing $400 or would have to sell something or borrow money to cover it.[24] Whatever the cause of these financial shortfalls, consumers in these situations sometimes seek what may broadly be termed a ''liquidity loan.''

The Mandatory Underwriting Provisions of the 2017 Final Rule focused specifically on short-term loans and a smaller market segment of longer-term balloon-payment loans. As the Bureau noted, the largest categories of short-term loans are ''payday loans,'' which are generally short-term loans required to be repaid in a lump-sum single payment on receipt of the borrower's next income payment, and short-term vehicle title loans, which are also almost always due in a lump-sum single payment, typically within 30 days after the loan is made.[25]

1. Payday Loans

Seventeen States and the District of Columbia prohibit payday lending or impose interest rate caps that payday lenders find too low to enable them to make such loans profitably. The remaining 33 States have either created a carve-out from their general usury cap

[10] 12 CFR 1041.4.

[11] 12 CFR 1041.5.

[12] 12 CFR 1041.6.

[13] 12 CFR 1041.10 and 1041.11.

[14] 12 CFR 1041.12(b)(1) through (3).

[15] *See* 12 U.S.C. 5531(c)(1)(A).

[16] *See* 12 U.S.C. 5531(c)(1)(B).

[17] *See* 12 U.S.C. 5531(d)(2)(A).

[18] 12 CFR 1041.9(b)(1)(ii).

[19] *See* 82 FR 54472, 54474–96.

[20] *Id.* at 54555–60.

[21] *Id.* at 54814–46.

[22] *Id.* at 54474.

[23] *Id., citing, generally,* Rob Levy & Joshua Sledge, *A Complex Portrait: An Examination of Small-Dollar Credit Consumers* (Ctr. for Fin. Serv. Innovation, 2012), *https://www.fdic.gov/news/conferences/consumersymposium/2012/A%20Complex%20Portrait.pdf.*

[24] Bd. of Governors of the Fed. Reserve Sys., *Report on the Economic Well-Being of U.S. Households in 2017,* at 2, 5, 7, 21, 23 (May 2018), *https://www.federalreserve.gov/publications/files/2017-report-economic-well-being-us-households-201805.pdf*; and Bd. of Governors of the Fed. Reserve Sys., *Report on the Economic Well-Being of U.S. Households in 2017, Appendix A: Survey Questionnaire, https://www.federalreserve.gov/publications/appendix-a-survey-questionnaire.htm.* These represent improvements from the 2016 survey relied upon in the 2017 Final Rule. *See* 82 FR 54472, 54474 & n.9, *citing* Bd. of Governors of the Fed. Reserve Sys., *Report on the Economic Well-Being of U.S. Households in 2016,* at 2, 8 (May 2017), *https://www.federalreserve.gov/publications/files/2016-report-economic-well-being-us-households-201705.pdf.*

[25] 82 FR 54472, 54475.

for payday loans or do not regulate interest rates on loans.[26] Several States that previously authorized payday lending have, over the past several years, changed their laws to restrict payday lending.[27]

States that permit payday lending have chosen to adopt a variety of limitations, including regulations of the maximum price,[28] minimum loan term,[29] maximum loan amount,[30] the maximum number of loans that can be made to an individual consumer (loan cap),[31] the maximum number of times that a consumer may renew or roll over a loan,[32] and the length of time between loans (cooling-off periods).[33] In addition, at least 16 States have adopted laws requiring payday lenders to offer borrowers the option of taking an extended repayment plan when encountering difficulty in repaying the loan.[34] These State laws represent the judgment of the various States as to the limitations, if any, that should be placed on the terms pursuant to which consumers have the ability to choose payday loans within their respective jurisdictions.

Changes to State-level regulation as described above may have contributed to the decline in payday lending complaints the Bureau handled through its Consumer Response database. As cited in the 2017 Final Rule, in 2016 the Bureau handled approximately 4,400 complaints in which consumers reported ''payday loan'' as the complaint product.[35] In contrast, the Bureau received approximately 2,900 payday loan complaints in 2017, and

[26] *See, e.g., id.* at 54477 & n.25. The 2017 Final Rule cited 35 payday authorizing States, counting New Mexico among those States. At the time the rule was issued, New Mexico had enacted a law which had not yet taken effect, prohibiting short-term payday lending. Now that the law is in effect, New Mexico is no longer counted here. Recently, Ohio enacted a law that, when implemented on April 27, 2019, will effectively prohibit short-term payday and vehicle title lending. Because the Ohio law has not yet been implemented, Ohio is counted as a payday authorizing State and references herein refer to current Ohio law. *See* Ohio House Bill 123, *An Act to Modify the Short-Term Loan Act, https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-123; https://www.com.ohio.gov/documents/fiin_HB123_Guidance.pdf.*

[27] *See, e.g.,* 82 FR 54472, 54485–86. In addition, most recently, voters in Colorado approved a ballot initiative on November 6, 2018 to cap annual percentage rates (APRs) on payday loans at 36 percent. This initiative takes effect February 1, 2019, shortly before the release of this NPRM. Colorado is now counted here as a State prohibiting short-term payday lending. *See* Colo. Legislative Council Staff, *Initiative #126 Initial Fiscal Impact Statement, https://www.sos.state.co.us/pubs/elections/Initiatives/titleBoard/filings/2017-2018/126FiscalImpact.pdf; see also* Colo. Sec'y of State, *Official Certified Results—State Offices & Questions, https://results.enr.clarityelections.com/CO/91808/Web02-state.220747/#/c/C_2* (Proposition 111).

[28] Of the States that expressly authorize payday lending, Rhode Island has the lowest cap at 10 percent of the loan amount. R.I. Gen. Laws sec. 19–14.4–4(4). Florida caps fees at 10 percent of the loan amount plus a flat $5 database verification fee. Fla. Stat. Ann. sec. 560.404(6). Oregon's fees are $10 per $100 capped at $30 plus 36 percent interest. Or. Rev. Stat. sec. 725A.064(1) & (2). Some States have tiered caps depending on the size of the loan. Generally, in these States the cap declines with loan size. However, in Mississippi, the cap is $20 per $100 for loans under $250 and $21.95 for loans up to $500 (the State maximum). Miss. Code Ann. sec. 75–67–519(4). Six States do not cap fees on payday loans or are silent on fees: Delaware, Idaho, Nevada, Texas (no cap on credit access business fees added to interest on loans), Utah, and Wisconsin. Del. Code Ann. tit. 5, sec. 2229; Idaho Code sec. 28–46–412(3); Nev. Rev. Stat. Ann. sec. 675.365; Tex. Fin. Code Ann. sec. 393.602(b); Utah Code Ann. sec. 7–23–401; Wis. Stat. Ann. sec. 138.14(10)(a). *See also* 82 FR 54472, 54477 & n.31.

[29] For example, Washington requires the due date to be on or after the borrower's next pay date, but if the pay date is within seven days of taking out the loan, the due date must be on the second pay date after the loan is made. Wash. Rev. Code Ann. sec. 31.45.073(2). *See also* 82 FR 54472, 54478 & n.35.

[30] At least 18 States cap payday loan amounts between $500 and $600 (Alabama, Alaska, Florida, Hawaii, Iowa, Kansas, Kentucky, Michigan, Mississippi, Missouri, Nebraska, North Dakota, Ohio, Oklahoma, Rhode Island, South Carolina, Tennessee, and Virginia). Ala. Code sec. 5–18A–12(a); Alaska Stat. sec. 06.50.410; Fla. Stat. Ann. sec. 560.404(5); Haw. Rev. Stat. sec. 480F–4(c); Iowa Code Ann. sec. 533D.10(1)(b); Kan. Stat. Ann. sec. 16a–2–404(1)(c); Ky. Rev. Stat. Ann. sec. 286.9–100(9); Mich. Comp. Laws Ann. sec. 487.2153(1); Miss. Code Ann. sec. 75–67–519(2); Mo. Rev. Stat. sec. 408.500(1); Neb. Rev. Stat. sec. 45–919(1)(b); N.D. Cent. Code sec. 13–08–12(3); Ohio Rev. Code Ann. sec. 1321.39(A); Okla. Stat. Ann. tit. 59, sec. 3106(7); R.I. Gen. Laws sec. 19–14.4–5.1(a); S.C. Code Ann. sec. 34–39–180(B); Tenn. Code Ann. sec. 45–17–112(o); Va. Code Ann. sec. 6.2–1816(5). California limits payday loans to $300 (including the fee), and Delaware caps loans at $1,000. Cal. Fin. Code sec. 23035(a); Del. Code Ann. tit. 5, sec. 2227(7). States that limit the loan amount to the lesser of one percent of the borrower's income or a fixed-dollar amount include Idaho (25 percent or $1,000), Illinois (25 percent or $1,000), Indiana (20 percent or $550), Washington (30 percent or $700), and Wisconsin (35 percent or $1,500). Idaho Code Ann. sec. 28–46–413(1)–(2); 815 Ill. Comp. Stat. 122/2–5(e); Ind. Code secs. 24–4.5–7–402, 404; Wash. Rev. Code sec. 31.45.073(2); Wis. Stat. Ann. sec. 138.14(12)(b). At least one State, Nevada, caps the maximum payday loan at 25 percent of the borrower's gross monthly income. Nev. Rev. Stat. sec. 604A.5017. A few States' laws (*e.g.,* Utah and Wyoming) are silent as to the maximum loan amount. Utah Code Ann. sec. 7–23–401; Wyo. Stat. Ann. sec. 40–14–363. *See also* 82 FR 54472, 54477 & n.27.

[31] Washington limits consumers to no more than eight loans from all lenders in a rolling 12-month period. *See* Wash. Dep't of Fin. Insts., *2017 Payday Lending Report,* at 7, *https://dfi.wa.gov/sites/default/files/reports/2017-payday-loan-report.pdf.* Delaware, a State with no fee restrictions for payday loans, restricts consumers to five payday loans, including rollovers, in a 12-month period. Del. Code Ann. tit. 5, secs. 2227(7), 2235A(a)(1). *See also* 82 FR 54472, 54486 & nn.128, 129.

[32] States that prohibit rollovers include California, Florida, Hawaii, Illinois, Indiana, Kentucky, Michigan, Minnesota, Mississippi, Nebraska, Oklahoma, South Carolina, Tennessee, Virginia, Washington, and Wyoming. Cal. Fin. Code sec. 23037(a); Fla. Stat. Ann. sec. 560.404(18); Haw. Rev. Stat. sec. 480F–4(d); 815 Ill. Comp. Stat. 122/2–30; Ind. Code sec. 24–4.5–7–402(7); Ky. Rev. Stat. Ann. sec. 286.9–100(14); Mich. Comp. Laws Ann. sec. 487.2155(1); Minn. Stat. Ann. sec. 47.60(2)(f); Miss. Code Ann. sec. 75–67–519(5); Neb. Rev. Stat. sec. 45–919(1)(f); Okla. Stat. Ann. tit. 59, sec. 3109(A); S.C. Code Ann. sec. 34–39–180(F); Tenn. Code Ann. sec. 45–17–112(q); Va. Code Ann. sec. 6.2–1816(6); Wash. Rev. Code Ann. sec. 31.45.073(2); Wyo. Stat. Ann. sec. 40–14–364. Other States such as Iowa and Kansas restrict a loan from being repaid with the proceeds of another loan; Wisconsin limits such loans. Iowa Code Ann. sec. 533D.10(1)(e); Kan. Stat. Ann. sec. 16a-2–404(6); Wis. Stat. Ann. sec. 138.14 (12)(a). Other States that permit some limited degree of rollovers include Alabama (one); Alaska (two); Delaware (four); Idaho (three); Missouri (six if there is at least 5 percent principal reduction on each rollover); Nevada (may extend loan up to 60 days after the end of the initial loan term); North Dakota (one); Oregon (two); Rhode Island (one); and Utah (allowed up to 10 weeks after the execution of the first loan). Ala. Code sec. 5–18A–12(b); Alaska Stat. sec. 06.50.470(b); Del. Code Ann. tit. 5, sec. 2235A(a)(2); Idaho Code Ann. sec. 28–46–413(9); Mo. Rev. Stat. sec. 408.500(6); Nev. Rev. Stat. sec. 604A.5029(1); N.D. Cent. Code sec. 13–08–12(12); Or. Rev. Stat. sec. 725A.064(6); R.I. Gen. Laws sec. 19–14.4–5.1(g); Utah Code Ann. sec. 7–23–401(4)(c). *See also* 82 FR 54472, 54478 & n.37.

[33] States with cooling-off periods include Alabama (next business day after a rollover is paid in full); Florida (24 hours); Illinois (seven days after a consumer has had payday loans for more than 45 days); Indiana (seven days after five consecutive loans); North Dakota (three business days); Ohio (one day with a two loan limit in 90 days, four per year); Oklahoma (two business days after fifth consecutive loan); Oregon (seven days); South Carolina (one business day between all loans and two business days after seventh loan in a calendar year); Virginia (one day between all loans, 45 days after fifth loan in a 180-day period, and 90 days after completion of an extended payment plan or extended term loan); and Wisconsin (24 hour after renewals). Ala. Code sec. 5–18A–12(b); Fla. Stat. Ann. sec. 560.404(19); 815 Ill. Comp. Stat. 122/2–5(b); Ind. Code sec. 24–4.5–7–401(2); N.D. Cent. Code sec. 13–08–12(4); Ohio Rev. Code Ann. sec. 1321.41(E), (N), (R); Okla. Stat. Ann. tit. 59, sec. 3110; Or. Rev. Stat. sec. 725A.064(7); S.C. Code Ann. sec. 34–39–270(A), (B); Va. Code Ann. sec. 6.2–1816(6); Wis. Stat. Ann. sec. 138.14(12)(a). *See also* 82 FR 54472, 54478 & n.39.

[34] States with statutory extended repayment plans include Alabama, Alaska, Florida, Idaho, Illinois, Indiana, Louisiana, Michigan (fee permitted), Nevada, Oklahoma (fee permitted), South Carolina, Utah, Virginia, Washington, Wisconsin, and Wyoming. Florida also requires that, as a condition of providing a repayment plan (called a grace period), borrowers make an appointment with a consumer credit counseling agency and complete counseling by the end of the plan. Ala. Code sec. 5–18A–12(c); Alaska Stat. sec. 06.50.550(a); Fla. Stat. Ann. sec. 560.404(22)(a); Idaho Code Ann. sec. 28–46–414; 815 Ill. Comp. Stat. 122/2–40; Ind. Code sec. 24–4.5–7–401(3), 404; La. Rev. Stat. Ann. sec. 9:3578.4.1; Mich. Comp. Laws Ann. sec. 487.2155(2); Nev. Rev. Stat. sec. 604A.5027(1); Okla. Stat. tit. 59, sec. 3109(D); S.C. Code Ann. sec. 34–39–280; Utah Code Ann. sec. 7–23–403; Va. Code Ann. sec. 6.2–1816(26); Wash. Rev. Code Ann. sec. 31.45.084(1); Wis. Stat. Ann. sec. 138.14(11)(g); Wyo. Stat. Ann. sec. 40–14–366(a). *See* also 82 FR 54472, 54478 & n.40.

[35] Bureau of Consumer Fin. Prot., *Consumer Response Annual Report, Jan. 1–Dec. 31, 2016,* at 33 (March 2017), *https://www.consumerfinance.gov/documents/3368/201703_cfpb_Consumer-Response-Annual-Report-2016.PDF.*

approximately 2,300 in 2018.[36] In each of these reporting years, it appears that consumers complained most frequently about unexpected fees associated with payday loans, while consumers complaining about receiving a loan for which payday lenders had not determined their ability to repay loans were less frequent.

The primary channel through which consumers obtain payday loans, as measured by total dollar volume, is through State-licensed storefront locations. Nevertheless, as discussed in the 2017 Final Rule, the online payday loan industry generates about 50 percent of total payday loan revenue.[37] According to one industry analyst, there were an estimated 14,348 storefronts in 2017, down from the industry's peak of over 24,000 stores ten years earlier.[38] In the 2017 Final Rule, the Bureau noted that there were at least 10 payday lenders with approximately 200 or more storefront locations.[39] The Bureau also estimated that there were over 2,400 storefront payday lenders that are small businesses as defined by the Small Business Administration (SBA).[40]

Studies seeking to determine the number of consumers who use payday loans annually have come up with a wide range of estimates, from 2.2 million households[41] to 12 million individuals.[42] Given the number of storefronts and the average number of customers per storefront plus the presence of the large online market for payday loans, the actual number of borrowers appears closer to the higher end of the estimates and is cited by at least one industry trade association.[43]

A number of studies have focused on the characteristics of payday borrowers and have found that they typically come from low and moderate income households.[44] The Bureau's own research found that 18 percent of storefront borrowers relied on Social Security or some other form of government benefits or public assistance.[45]

Studies of payday borrowers show poor credit histories, limited credit availability, and recent credit-seeking activity.[46] For example, a report analyzing credit scores of borrowers from five large storefront payday lenders and a number of online lenders found that the average storefront borrower had a VantageScore 3.0 score of 532 and that the average online borrower had a score of 525.[47] An academic paper that matched administrative data (*i.e.,* data that is collected or obtained from an organization's or institution's own records and operations) from one storefront payday lender to credit bureau data found that 80 percent of payday applicants had either no credit card or no credit available on a card.[48] The average borrower had 5.2 credit inquiries on her credit report over the 12 months preceding her initial application for a payday loan (three times the number for the general population), but obtained only 1.4 accounts on average.[49]

Surveys of payday borrowers add to the picture of a substantial portion of consumers in financial distress.[50] For example, in a survey of payday borrowers published in 2009, fewer than half reported having any savings or

[36] Bureau of Consumer Fin. Prot., *Consumer Response Annual Report, Jan. 1–Dec. 31, 2017,* at 34 (March 2018), *https://www.consumerfinance.gov/documents/6406/cfpb_consumer-response-annual-report_2017.pdf;* Bureau of Consumer Fin. Prot. Consumer Response Database. To provide a sense of the number of complaints for payday loans relative to the number of complaints for other product categories, from October 1, 2017 through September 30, 2018, approximately 0.7 percent of all consumer complaints the Bureau received were about payday loans, and 0.2 percent were about vehicle title loans. Bureau of Consumer Fin. Prot., *Fall 2018 Semi-Annual Report of the Bureau of Consumer Financial Protection,* at 25 (forthcoming Feb. 2019). The Bureau notes that there is some overlap across product categories, for example, a consumer complaining about the conduct of a debt collector seeking to recover on a payday loan would be in the debt collection product category rather than the payday loan product category.

[37] *See* 82 FR 54472, 54487 and John Hecht, *Short Term Lending Update: Moving Forward with Positive Momentum* (2018) (Jefferies LLC, slide presentation) (on file).

[38] *See* John Hecht, *Short Term Lending Update: Moving Forward with Positive Momentum* (2018) (Jefferies LLC, slide presentation) (on file). In 2017 Final Rule, the Bureau cited the same analyst's estimate of 16,480 payday storefronts in 2015. *See* 82 FR 54472, 54480 & n.53.

[39] 82 FR 54472, 54479 & n.49. These lenders include ACE Cash Express, Advance America, Amscot Financial, Axcess Financial (including brands Check 'n Go, Allied Cash), Check Into Cash, Community Choice Financial (including brand Checksmart), CURO Financial Technologies (including brand Speedy Cash), DFC Global Corp (Money Mart), FirstCash, and QC Holdings. Additional payday lenders with at least 200 storefront locations include Cash Express, LLC and Cottonwood Financial dba Cash Store. *See* ACE Cash Express, ''Store Locator,'' *https://www.acecashexpress.com/locations;* Advance America, ''Find an Advance America Store Location,'' *https://www.advanceamerica.net/store-locations;* Amscot Financial, Inc., ''Amscot Locations,'' *https://www.amscot.com/locations.aspx;* Check 'n Go, ''State Center,'' *https://www.checkngo.com/resources/state-center;* Allied Cash Advance, ''Allied Cash Advance Store Directory,'' *https://locations.alliedcash.com/index.html;* Check Into Cash, ''Payday Loan Information By State,'' *https://checkintocash.com/payday-loan-information-by-state;* Community Choice Financial (Checksmart), ''Locations,'' *https://www.ccfi.com/locations/;* SpeedyCash, ''Speedy Cash Stores Near Me,'' *https://www.speedycash.com/find-a-store;* Money Mart Financial Services, ''Home,'' *http://www.moneymartfinancialservices.com/index.html;* FirstCash Inc., ''Find a Location Near You,'' *http://www.firstcash.com/;* QC Holdings, Inc., ''United States Retail Operations,'' *https://www.qchi.com/productsandservices/usa/retail/; see* Cash Express, LLC, *https://www.cashtn.com/; see also https://www.consumerfinance.gov/about-us/newsroom/bureau-consumer-financial-protection-settles-cash-express/*(noting approximately 328 retail lending outlets); Cottonwood Financial dba Cash Store, *https://www.cashstore.com/cash-advance-lender-about-us* (all last visited Feb. 4, 2019).

[40] 82 FR 54472, 54479 & n.52. The number of storefront payday lenders classified as small businesses has likely declined to some extent, continuing the trend noted over the last several years. *See id.* at 54480 & n.53.

[41] *See* Fed. Deposit Ins. Corp., *2017 FDIC National Survey of Unbanked and Underbanked Households,* at 41 (Oct. 2018), *https://www.fdic.gov/householdsurvey/2017/2017report.pdf.* This is a reduction from the 2015 numbers of 2.5 million households cited in the 2017 Final Rule; *see* 82 FR 54472, 54479 & n.42, *citing* Fed. Deposit Ins. Corp., *2015 FDIC National Survey of Unbanked and Underbanked Households,* at 2, 34 (Oct. 20, 2016), *https://www.fdic.gov/householdsurvey/2015/2015report.pdf.*

[42] 82 FR 54472, 54479 & n.44, *citing* Pew Charitable Trusts, *Payday Lending in America: Who Borrows, Where They Borrow, and Why,* at 4 (July 2012), *http://www.pewtrusts.org/~/media/legacy/uploadedfiles/pcs_assets/2012/pewpaydaylendingreportpdf.pdf.*

[43] Community Financial Services of America, a trade association representing payday and small-dollar lenders, states that approximately 12 million Americans use small dollar loans each year. *See https://www.cfsaa.com/* (last visited Feb. 4, 2019). The 2017 Final Rule pointed to one study estimating, based on administrate State data from three States, that the average payday store served around 500 customers per year. 82 FR 54472, 54480 & n.59 citing Pew Charitable Trusts, *Payday Lending in America: Policy Solutions,* at 18 (Report 3, 2013) *https://www.pewtrusts.org/-/media/legacy/uploadedfiles/pcs_assets/2013/pewpaydaypolicysolutionsoct2013pdf.pdf.*

[44] *See* 82 FR 54472, 54556–57 (citing studies discussed in text).

[45] *See id.* at 54556 & n.469, referencing the Bureau's analysis of confidential supervisory data in Bureau of Consumer Fin. Prot., *Payday Loans and Deposit Advance Products—A White Paper of Initial Data Findings,* at 18 (2013), *https://files.consumerfinance.gov/f/201304_cfpb_payday-dap-whitepaper.pdf.*

[46] *See* 82 FR 54472, 54557 (citing studies discussed in text).

[47] *See id.* at 54557, nn.480, 482, *citing* nonPrime101, *Report 8: Can Storefront Payday Borrowers Become Installment Loan Borrowers? Can Storefront Payday Lenders Become Installment Lenders?,* at 5, 7 (2015) (on file). A VantageScore 3.0 score is a credit score created by an eponymous joint venture of the three major credit reporting companies; scores lie in the range of 300–850. *See* 82 FR 54472, 54557 n.479. By way of comparison, the national average VantageScore in 2017 was 675 and only 21.2 percent of consumers have a VantageScore below 600. Experian, *State of Credit: 2017* (2018), *https://www.experian.com/blogs/ask-experian/state-of-credit/.*

[48] *See* 82 FR 54472, 54557 & n.477, *citing* Neil Bhutta et al., *Consumer Borrowing after Payday Loan Bans,* 59 J. of L. and Econ. 225, at 231–233 (2016). Note that the credit score used in this analysis was the Equifax Risk Score which ranges from 280–850. Frederic Huynh, *FICO Score Distribution,* FICO Blog (Apr. 15, 2013), *http://www.fico.com/en/blogs/risk-compliance/fico-score-distribution-remains-mixed/.*

[49] 82 FR 54472, 54557 & n.478, *citing* Neil Bhutta et al., *Consumer Borrowing after Payday Loan Bans,* 59 J. of L. & Econ. 225, at 231–233 (2016).

[50] 82 FR 54472, 54458 (citing surveys referenced in text).

reserve funds.[51] Similarly, a 2007 survey found that over 80 percent of payday borrowers reported making at least one late payment on a bill in the preceding three months, and approximately one quarter reported frequently paying bills late.[52] Approximately half reported bouncing at least one check in the previous three months, and 30 percent reported doing so more than once.[53] Furthermore, a 2012 survey found that 58 percent of payday borrowers report that they struggle to pay their bills on time.[54]

According to Bureau research, payday loan borrowers typically borrow relatively small amounts, with a median loan size of $350.[55] As the Bureau observed in the 2017 Final Rule, understanding why borrowers take out a payday loan is challenging for several reasons. For example, because money is fungible, a consumer who has an unexpected expense may not feel the effect fully until weeks later and thus, when surveyed, may say either that she took out the loan because of the unexpected expense, or that she took out the loan to cover a bill that had come due and for which she was short of cash.[56] Perhaps because of this difficulty, results across surveys are somewhat inconsistent, with one finding that unexpected expenses were driving a large share of payday borrowing, while others finding that payday loans are used primarily to pay for regular expenses such as rent, utilities, or other bills.[57]

Research by the Bureau found that 80 percent to 85 percent of payday borrowers succeed in repaying their loans.[58] Of these, the Bureau found that between 22 percent and 30 percent do so after receiving a single loan while the remainder repaid after reborrowing one or more times.[59] Of those who defaulted, according to the Bureau's research, roughly 30 percent did so when the loan was initially due while the remainder defaulted after taking out one or more subsequent loans.[60] The Bureau found that borrowers end up taking out at least four loans in a row 43 to 50 percent of the time, taking out at least seven loans in a row 27 to 33 percent of the time, and taking out at least 10 loans in a row 19 to 24 percent of the time.[61] The average payday loan sequence, according to Bureau research, is between 5 and 6 loans.[62]

A longitudinal report by a specialty consumer reporting agency following 1,000 borrowers conducted over 4.5 years found that 30 percent of the original 1,000 borrowers used payday loans persistently over the full observation period.[63] For the persistent borrowers, the average number of loan sequences was approximately 7.3 and these borrowers had a payday loan outstanding about 60 percent of the time.[64] Of the original borrowers who did not use payday loans persistently during the observation period, the average number of loan sequences was approximately 4.5.[65]

2. Single-Payment Vehicle Title Loans

The second major category of loans covered by the Mandatory Underwriting Provisions of the 2017 Final Rule is single-payment vehicle title loans. As explained in the 2017 Final Rule, in a title loan transaction, the borrower must provide identification and usually the title to the vehicle as evidence that the borrower owns the vehicle ''free and clear.'' [66] The lender retains the vehicle title or some other form of security interest during the duration of the loan, while the borrower retains physical possession of the vehicle.[67] Single-payment vehicle title loans are typically due in 30 days.[68]

As with payday loans, the States have taken different regulatory approaches with respect to single-payment vehicle title loans. Seventeen States currently permit single-payment vehicle title lending.[69] Another six States permit title installment loans but those loans are not affected by the Mandatory Underwriting Provisions of the 2017 Final Rule.[70] Three States (Arizona, Georgia, and New Hampshire) permit single-payment vehicle title loans but prohibit or substantially restrict payday loans.[71] As with State restrictions on payday loans, these State vehicle title laws represent the judgment of the various States as to the limitations, if any, that should be placed on consumers' ability to choose vehicle title loans within their respective jurisdictions.

Also as with payday loans, some of the States that permit single-payment vehicle title loans have adopted a

[51] *Id.* at 54458 & n.485, *citing* Gregory Elliehausen, *An Analysis of Consumers' Use of Payday Loans,* at 29 (Geo. Wash. Sch. of Bus., Monograph No. 41, 2009), *https://www.researchgate.net/publication/237554300_AN_ANALYSIS_OF_CONSUMERS%27_USE_OF_PAYDAY_LOANS.*

[52] 82 FR 54472, 54558 & n.486, *citing* Jonathan Zinman, *Restricting Consumer Credit Access: Household Survey Evidence on Effects Around the Oregon Rate Cap,* at 20 tbl. 1 (Dartmouth College, 2008), *http://www.dartmouth.edu/~jzinman/Papers/Zinman_RestrictingAccess_oct08.pdf.*

[53] *Id.*

[54] 82 FR 54472, 54558 & n.487, *citing* Pew Charitable Trusts, *Payday Lending in America: How Borrowers Choose and Repay Payday Loans,* at 9 (Report 2, 2013), *http://www.pewtrusts.org/en/research-and-analysis/reports/2013/02/19/how-borrowers-choose-and-repay-payday-loans.*

[55] 82 FR 54472, 54477 & n.28, *citing* Bureau of Consumer Fin. Prot., *Payday Loans and Deposit Advance Products—A White Paper of Initial Data Findings,* at 15 (2013), *https://files.consumerfinance.gov/f/201304_cfpb_payday-dap-whitepaper.pdf.*

[56] 82 FR 54472, 54558.

[57] *Id.; see also id.* at 54558–59 (citing and discussing surveys).

[58] Bureau of Consumer Fin. Prot., *Supplemental findings on payday, payday installment, and vehicle title loans and deposit advance products,* at 120 (June 2016), *https://www.consumerfinance.gov/documents/329/Supplemental_Report_060116.pdf (hereinafter, Supplemental Findings).*

[59] *Id.* The Bureau looked at repayment rates over loan ''sequences'' and analyzed outcomes using a 14-day definition of a loan sequence (*i.e.,* treating loans made within 14 days of a prior loan as part of a single sequence) and, alternatively, a 30-day definition. The higher repayment rates are from the 14-day definition.

[60] *Id.*

[61] *Id.* at 123.

[62] *Id.* at 117.

[63] *See* 82 FR 54472, 54836, *citing* nonPrime 101, *Report 7C: A Balanced View of Storefront Payday Borrowing Patterns,* at tbl. A–7 (2016) (on file); *see also id.* at 6 (tbl.3), 11. The study sought to have a constant population of 1,000 borrowers. Borrowers who left during the time period of the study were replaced by new borrowers to maintain a constant population 1,000 borrowers. *Id.* at 3. For the study's definition of ''persistent borrower,'' see *id.* at 4.

[64] nonPrime101, *Report 7C: A Balanced View of Storefront Payday Borrowing Patterns,* at 3, 6 (2016) (on file); *see also id.* at 14–15 & fig. 42.

[65] *Id.* at 6 & tbl. 3.

[66] 82 FR 54472, 54489.

[67] *See id.* at 54490. *See also, e.g.,* Speedy Cash, *Title Loans FAQs, https://www.speedycash.com/faqs/title-loans* (last visited Feb. 4. 2019); TitleMax, *Answers to Your Questions about Title Loans, https://www.titlemax.com/faqs* (last visited Feb. 4, 2019).

[68] *See* 82 FR 54472, 54490 & n.181, *citing* Pew Charitable Trusts, *Auto Title Loans—Market practices and borrowers' experiences* (2015), *https://www.pewtrusts.org/~/media/assets/2015/03/autotitleloansreport.pdf. See also* Idaho Dep't of Fin., *Idaho Credit Code 'Fast Facts,' https://www.finance.idaho.gov/ConsumerFinance/Documents/Idaho-Credit-Code-Fast-Facts-With-Fiscal-Annual-Report-Data-01012015.pdf*; Tenn. Dep't of Fin. Inst., *2018 Report on the Title Pledge Industry,* at 4 (Apr. 23, 2018) *https://www.tn.gov/content/dam/tn/financialinstitutions/new-docs/TP%20Annual%20Report%202018.pdf.*

[69] As noted in the 2017 Final Rule, New Mexico had enacted a law in 2017, effective January 1, 2018, that prohibits single-payment vehicle title loans and allows only installment title lending. New Mexico is no longer counted as one of the States authorizing single-payment vehicle title loans. *See* 82 FR 54472, 54490. Ohio is counted as one of the 17 States but as noted above, a bill signed by the governor in 2018 will prohibit lenders from making loans of $5,000 or less secured by a vehicle title or any other collateral. Ohio lenders must comply with the law as of April 27, 2019. *See https://www.com.ohio.gov/documents/fiin_HB123_Guidance.pdf; see also* Ohio House Bill 123, *An Act to Modify the Short-Term Loan Act, https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-123.*

[70] *See* 82 FR 54472, 54490. New Mexico is now counted in this group as the State allows only title installment lending.

[71] *Id.*

variety of regulatory provisions governing such loans, including limitations on the maximum price[72] and maximum loan size.[73] A few States regulate reborrowing with either a cooling-off period between loans or a mandatory minimum amortization.[74] A number of State laws contain provisions addressing default and repossession including cure provisions and provisions governing deficiencies or surpluses if a vehicle is repossessed and sold.[75]

As explained in the 2017 Final Rule, information about the vehicle title market is more limited than the storefront payday industry.[76] There are approximately 8,000 title loan storefront locations in the United States, about half of which also offer payday loans.[77] Of those locations that predominantly offer vehicle title loans, three privately held firms dominate the market and together account for approximately 3,000 stores in over 20 States.[78] In addition to the large title lenders, the Bureau estimated that there are about 800 vehicle title lenders that are small businesses as defined by the SBA.[79]

The available evidence suggests that between 1.8 million households and 2 million adults use vehicle title loans annually, although these studies do not necessarily differentiate between single-payment and installment vehicle title loans.[80] The demographic profiles of vehicle title borrowers appear to be roughly comparable to the demographics of payday borrowers, which is to say that they tend to be lower and moderate income.[81] In one survey, 30 percent of vehicle title borrowers reported that they struggle to meet their expenses most or all months and another 20 percent said that was true half the time.[82] The Bureau is not aware of any published research regarding the credit profiles of single-payment vehicle title borrowers.

As with payday loans, understanding the factors that cause consumers to use vehicle title loans is challenging. In one survey, 25 percent of borrowers attributed their need for a vehicle title loan to an unexpected emergency expense, 52 percent attributed their need to recurring expenses, and the remainder pointed to other expenses or did not know.[83]

Vehicle title loans differ from payday loans in at least two important respects. First, these loans enable consumers to borrow larger amounts: The Bureau's research found that the median vehicle title loan amount was $694, or roughly double the size of the median payday loan amount.[84] Second, whereas a payday loan is only available to those with a bank account or other transaction account, unbanked consumers with clear vehicle title can obtain a vehicle title loan. Indeed, some vehicle title lenders do not require a copy of a pay stub or other evidence of current income in order to make a loan.[85]

The Bureau's research found that roughly two-thirds of single-payment vehicle title borrowers repay their loans. Of borrowers who repaid, 12 percent of them did so when the initial loan was due and the remainder reborrowed one or more times before repaying.[86] Of borrowers who defaulted, roughly 30 percent did so when the loan was initially due, while the remainder defaulted after taking out one or more subsequent loans.[87] Borrowers end up taking out at least four loans in a row roughly 55 percent of the time, taking out at least seven loans roughly 35 percent of the time, and taking out at

[72] States with a 15 percent to 25 percent per month rate cap include Alabama, Georgia (rate decreases after 90 days), Mississippi, and New Hampshire. Ala. Code sec. 5–19A–7(a); Ga. Code Ann. sec. 44–12–131(a)(4); Miss. Code Ann. sec. 75–67–413(1); N.H. Rev. Stat. Ann. sec. 399–A:18(I)(f). Tennessee limits interest rates to 2 percent per month, but also allows for a fee up to 20 percent of the original principal amount. Tenn. Code Ann. sec. 45–15–111(a). Virginia's fees (installment title loans) are tiered at 22 percent per month for amounts up to $700 and then decrease on larger loans. Va. Code Ann. sec. 6.2–2216(A). *See also* 54472, 54490 & n.184.

[73] For example, some maximum vehicle title loan amounts are $2,500 in Mississippi and Tennessee, and $5,000 in Missouri. Miss. Code Ann. sec. 75–67–415(f); Tenn. Code Ann. sec. 45–15–115(3); Mo. Rev. Stat. sec. 367.527(2). Illinois limits the loan amount to $4,000 or 50 percent of monthly income, Virginia (installment title loans) and Wisconsin limit the loan amount to 50 percent of the vehicle's value and Wisconsin also has a $25,000 maximum loan amount. Ill. Admin. Code tit. 38, sec. 110.370(a); Va. Code Ann. sec. 6.2–2215(1)(d); Wis. Stat. Ann. sec. 138.16(1)(c), (2)(a). Examples of States with no limits on loan amounts, limits of the amount of the value of the vehicle, or statutes that are silent about loan amounts include Arizona, Idaho, and Utah. Ariz. Rev. Stat. Ann. sec. 44–291(A); Idaho Code Ann. sec. 28–46–508(3); Utah Code Ann. sec. 7–24–202(3)(c). *See also* 82 FR 54472, 54491.

[74] Illinois requires 15 days between title loans. Ill. Admin. Code tit. 38, sec. 110.370(c). Delaware requires title lenders to offer a workout agreement after default but prior to repossession that repays at least 10 percent of the outstanding balance each month. Delaware does not cap fees on title loans and interest continues to accrue on workout agreements. Del. Code Ann. tit. 5, secs. 2255, 2258. New Hampshire law prohibits title lenders from making a title loan within 60 days of a prior payday or title loan and title loan renewals are permitted up to nine times with at least 10 percent amortization of the original balance owed. N.H. Rev. Stat. Ann. secs. 399–A:18.I(e), 399–A:19.II. *See also* 82 FR 54472, 54491 & n.185.

[75] For example, Georgia allows repossession fees and storage fees. Ga. Code Ann. sec. 44–12–131(a)(4)(C). Arizona, Delaware, Idaho, Missouri, South Dakota, Tennessee, Utah, Virginia, and Wisconsin specify that any surplus must be returned to the borrower. Ariz. Rev. Stat. Ann. sec. 47–9608(A)(4); Del. Code Ann. tit. 5, sec. 2260; Idaho Code Ann. sec. 28–9–615(d); Mo. Rev. Stat. sec. 408.553; S.D. Codified Laws sec. 54–4–72; Tenn. Code Ann. sec. 45–15–114(b)(2); Utah Code Ann. sec. 7–24–204(3); Va. Code Ann. sec. 6.2–2217(C); Wis. Stat. sec. 138.16(4)(e). Mississippi requires that 85 percent of any surplus be returned. Miss. Code Ann. sec. 75–67–411(5). *See also* 82 FR 54472, 54491 & n.188.

[76] 82 FR 54472, 54491.

[77] *See id.* at 54491 & n.197, *citing* Pew Charitable Trusts, *Auto Title Loans—Market practices and borrowers' experiences* (2015), *https://www.pewtrusts.org/~/media/assets/2015/03/autotitleloansreport.pdf.*

[78] The largest vehicle title lender is TMX Finance, LLC, formerly known as Title Max Holdings, LLC, with about 1,200 stores. *See https://www.titlemax.com/store-locator/* and *https://www.titlebucks.com/store-locator/* (last visited Feb. 4, 2019) (TMX Finance has stores in 16 States and TitleBucks has stores in 6 States); *see also* Community Loans of America, *https://clacorp.com/about-us* (last visited Feb. 4, 2019) (over 1,000 locations in 25 States); Select Management Resources (roughly 600 stores) (Select Management Resources brands include LoanMax, LoanStar Title Loans, Midwest Title Loans, and North American Title Loans), *https://www.loanmaxtitleloans.net/SiteMap, https://www.loanstartitleloans.net/SiteMap, https://www.midwesttitleloans.net/SiteMap, https://www.northamericantitleloans.net/SiteMap* (all last visited Feb. 4, 2019). Store counts for these three firms may include States with stores that offer installment vehicle title loans.

[79] 82 FR 54472, 54492 & n.200, explaining that State reports have been supplemented with estimates from Center for Responsible Lending, revenue information from public filings, and from non-public sources. *See* Jean Ann Fox et al., *Driven to Disaster: Car-Title Lending and Its Impact on Consumers,* at 7 (Consumer Fed'n of Am. and Ctr. for Responsible Lending, 2013), *https://www.responsiblelending.org/other-consumer-loans/car-title-loans/research-analysis/CRL-Car-Title-Report-FINAL.pdf.*

[80] Fed. Deposit Ins. Corp., *2017 FDIC National Survey of Unbanked and Underbanked Households,* at 41 (Oct. 2018), *https://www.fdic.gov/household survey/2017/2017report.pdf.* The number of households using title loans in the FDIC survey rose from the 1.7 million households reported in the 2015 survey cited in the 2017 Final Rule. *See* Pew Charitable Trusts, *Auto Title Loans—Market practices and borrowers' experiences,* at 33 (2015), *https://www.pewtrusts.org/~/media/assets/2015/03/autotitleloansreport.pdf*; 82 FR 54472, 54491 & n.195.

[81] Fed. Deposit Ins. Corp., *2017 FDIC National Survey of Unbanked and Underbanked Households* (Oct. 2018), *https://www.fdic.gov/householdsurvey/2017/2017report.pdf* (calculations made using custom data tool).

[82] Pew Charitable Trusts, *Auto Title Loans—Market practices and borrowers' experiences,* at 6 (2015), *https://www.pewtrusts.org/~/media/assets/2015/03/autotitleloansreport.pdf.*

[83] *Id.* at 7.

[84] 82 FR 54472, 54490 & n.182, *citing* Bureau of Consumer Fin. Prot., *Single-Payment Vehicle Title Lending,* (May 2016), *https://files.consumerfinance.gov/f/documents/201605_cfpb_single-payment-vehicle-title-lending.pdf.*

[85] 82 FR 54472, 54490 & n.174.

[86] *Id.* at 54566 & n.531, *citing* Bureau of Consumer Fin. Prot., *Single-Payment Vehicle Title Lending,* at 11 (May 2016), *https://files.consumerfinance.gov/f/documents/201605_cfpb_single-payment-vehicle-title-lending.pdf.*

[87] Bureau of Consumer Fin. Prot., *Single-Payment Vehicle Title Lending,* at 11 (May 2016), *https://files.consumerfinance.gov/f/documents/201605_cfpb_single-payment-vehicle-title-lending.pdf.*

least 10 loans slightly over 20 percent of the time.[88]

3. Longer-Term Balloon-Payment Loans

The third category of loans covered by the Mandatory Underwriting Provisions of the 2017 Final Rule is longer-term balloon-payment loans which generally involve a series of small, often interest-only, payments followed by a single larger lump sum payment.[89] In 2017, the Bureau noted that there did not appear to be a large market for such loans. However, the Bureau expressed the concern that the market for these longer-term balloon-payment loans, with structures similar to payday loans and that pose similar risks to consumers, might grow if only covered short-term loans were regulated under the 2017 Final Rule.[90] Because the market was relatively small, the Bureau supplemented its analysis with relevant information on related types of covered longer-term loans, such as hybrid payday loans, payday installment loans, and vehicle title installment loans.[91] The profile of borrowers in the market for longer-term balloon-payment loans is similar to those seeking covered short-term and vehicle title loans—they also generally have low average incomes, poor credit histories, and recent credit-seeking activity.[92]

In analyzing the data that was available, the Bureau found that about 60 percent of longer-term balloon-payment loans resulted in refinancing, reborrowing, or default.[93] By contrast, nearly 60 percent of comparable fully-amortizing installment loans without a balloon-payment were repaid without refinancing or reborrowing.[94]

B. The Mandatory Underwriting Provisions of the 2017 Final Rule

The **SUPPLEMENTARY INFORMATION** accompanying the 2017 Final Rule provides an explanation of the Mandatory Underwriting Provisions of the Rule. This part II.B provides a high-level summary of certain of those provisions that are most directly relevant to the Bureau's decision to propose their reconsideration. The Bureau's rationale for the Mandatory Underwriting Provisions, as set forth in the **SUPPLEMENTARY INFORMATION** accompanying the 2017 Final Rule, is discussed in part V.A below.

As noted above, the 2017 Final Rule contains, in § 1041.4, an identification provision which provides that it is an unfair and abusive practice for a lender to make covered short-term loans or covered longer-term balloon-payment loans without reasonably determining that the consumers will have the ability to repay the loans according to their terms.

Section 1041.5 contains a set of underwriting requirements adopted to prevent the unfair and abusive practice. Specifically, § 1041.5(c)(2) requires lenders making covered short-term or longer-term balloon-payment loans to obtain a written statement from the consumer with respect to the consumer's net income and major financial obligations; obtain verification evidence of the consumer's income, if reasonably available, and major financial obligations; obtain a report from a national consumer reporting agency and a report from a registered information system with respect to the consumer; and review its own records and the records of its affiliates for evidence of the consumer's required payments under any debt obligations. Using these inputs, the lender is generally required pursuant to § 1041.5(b) and (c)(1) to make a reasonable projection of the consumer's net income and payments for major financial obligations over the ensuing 30 days; calculate either the consumer's debt-to-income ratio or the consumer's residual income; estimate the consumer's basic living expenses; and determine based upon the debt-to-income or residual income calculations whether the consumer will be able to make the payments for his or her payment obligations and the payments under the covered loan and still meet the consumer's basic living expenses during the term of the loan and for a period of 30 days thereafter.[95]

This determination is required each time a consumer returns to take out a new loan, although pursuant to § 1041.5(c)(2)(ii)(D) the lender generally need not obtain a new national credit report if one was obtained within the prior 90 days. If a consumer has obtained three loans each within 30 days of the prior loan, pursuant to § 1041.5(d)(2) the lender cannot make another covered short-term or longer-term balloon-payment loan for a period of 30 days.

As also noted above, the 2017 Final Rule contains a conditional exemption in § 1041.6 which allows lenders to make covered short-term loans without an ability-to-repay determination under § 1041.5. In order to qualify for the conditional exemption, pursuant to § 1041.6(b)(1)(i), the principal cannot exceed $500 for the first in a sequence of covered short-term loans, and pursuant to § 1041.6(b)(3) the conditional exemption is not available for vehicle title loans. A lender may not make more than three loans in succession under this conditional exemption and the loans must provide for a ''principal step-down'' over the sequence pursuant to § 1041.6(b)(1)(ii) and (iii) such that the second loan in a sequence can be for only two-thirds of the amount of the initial loan and the third loan in a sequence for one-third of the initial loan amount.

Pursuant to § 1041.6(c)(1), a lender cannot make a loan under the conditional exemption to a consumer who has had an outstanding covered short-term or longer-term balloon-payment loan in the preceding 30 days. Pursuant to § 1041.6(c)(3), the lender also cannot make a loan that would result in the consumer having more than six covered short-term loans outstanding during any consecutive 12-month period or result in the consumer being in debt on any covered short-term loans for longer than 90 days in any consecutive 12-month period. To verify the consumer's eligibility, before making a conditionally exempt covered short-term loan pursuant to § 1041.6(a), the lender must review the consumer's borrowing history in its own records and those of its affiliates and obtain a report from a Bureau-registered information system to determine a potential loan's compliance with § 1041.6(b) and (c).

Lenders making covered short-term and longer-term balloon-payment loans—including conditionally exempt covered short-term loans—generally are required to furnish certain information on those loans to every registered information system that has been registered with the Bureau for 180 days or more. Pursuant to § 1041.10(c)(1), certain information must be furnished no later than the date on which the loan is consummated or as close in time as feasible thereafter; pursuant to § 1041.10(c)(2), updates to such information must be furnished within a reasonable period after the event that requires the update.

In adopting the Mandatory Underwriting Provisions, the Bureau considered and rejected a number of alternatives to the Mandatory

[88] *Id.* at 12. The percentage of vehicle title borrowers in each of the categories described in the text does not appear to vary with different definitions of loan sequences as substantially all reborrowing occurs when the loan is due.

[89] 82 FR 54472, 54475. For examples of longer-term balloon-payment loans, see *id.* at 54486 & n.143, 54490 & n.179.

[90] *Id.* at 54472, 54527–28.

[91] *Id.* at 54580.

[92] *Id.* at 54581.

[93] *Id.* at 54582.

[94] *Id.*

[95] The Rule defines ''basic living expenses'' and ''major financial obligations.'' *See* 12 CFR 1041.5(a)(1) and (3).

Underwriting Provisions, including requiring disclosures, adopting a payment-to-income ratio requirement, adopting one of the various State law approaches to regulating short-term loans (such as rollover caps, less detailed ability-to-repay frameworks, complete bans on short-term lending products), and other suggestions from commenters.[96]

C. The Estimated Impacts of the Mandatory Underwriting Provisions of the 2017 Final Rule

The **SUPPLEMENTARY INFORMATION** accompanying the 2017 Final Rule contains regulatory impact analyses, including an analysis of the benefits and costs to consumers and covered persons[97] as required by section 1022(b)(2)(A) of the Dodd-Frank Act (also referred to as the ''section 1022(b)(2) analysis''),[98] and the final Regulatory Flexibility Act analysis (FRFA)[99] as required by that Act.[100] The Bureau does not here repeat all of that information and those findings. Rather, this part summarizes the estimates and conclusions from those analyses that the Bureau views as most relevant to its decision to propose rescinding the Mandatory Underwriting Provisions.

In the section 1022(b)(2) analysis for the 2017 Final Rule, the Bureau observed that the primary impacts of the Rule on covered persons derived mainly from the restrictions on who could obtain payday and single-payment vehicle title loans and the number of such loans that could be obtained. In order to simulate the impacts of the Mandatory Underwriting Provisions, the Bureau assumed, after reviewing a number of studies by the Bureau, Bureau staff, and outside researchers concerning payday borrowers, that only 33 percent of current payday and vehicle title borrowers would be able to satisfy the Rule's ability-to-pay requirement when initially applying for a loan and that for each succeeding loan in a sequence only one-third of borrowers would satisfy the mandatory underwriting requirement (*i.e.,* 11 percent of current borrowers for a second loan and 3.5 percent for a third loan).[101] Applying these assumptions to data with respect to current patterns of borrowing and reborrowing, the Bureau estimated that, absent the conditional exemption in § 1041.6, the Mandatory Underwriting Provisions of the Rule would reduce payday loan volume and lender revenue by approximately 92 to 93 percent relative to lending volumes in 2017 and vehicle title volume and lender revenue by between 89 and 93 percent.[102] Factoring in the expected effects of the conditional exemption, and assuming that payday lenders would endeavor to take full advantage of that exemption before seeking to qualify consumers for a loan under the mandatory underwriting requirements of § 1041.5, the Bureau estimated that the Mandatory Underwriting Provisions would result in a decrease in the number of payday loans of 55 to 62 percent and, because of the step-down feature of the conditional exemption, a decrease in payday lender revenue of between 71 and 76 percent.[103] Given that short-term vehicle title loans are not eligible for the conditional exemption, the Bureau estimated that the Mandatory Underwriting Provisions would result in a decrease in the number of short-term vehicle title loans of between 89 and 93 percent, with an equivalent reduction in loan volume and revenue.[104]

The Bureau, in its section 1022(b)(2) analysis, determined that these revenue impacts would have a substantial effect on the market. The Bureau projected that unless lenders were able to replace their reduction in revenue with other products, there would be a contraction in the number of storefronts of similar magnitude to the contraction in revenue, *i.e.,* a contraction of between 71 and 76 percent for storefront payday lenders and of between 89 and 93 percent for vehicle title lenders.[105]

In the section 1022(b)(2) analysis, the Bureau identified a number of impacts that the Mandatory Underwriting Provisions would have on consumers' ability to access credit. Specifically, the Bureau estimated that approximately 6 percent of existing payday borrowers would be unable to initiate a new loan because they would have exhausted the loans permitted under the conditional exemption and would not be able to satisfy the ability-to-repay requirement.[106] Vehicle title borrowers would be more likely to be unable to obtain an initial loan because the conditional exemption does not extend to such loans;[107] the Bureau noted that while those borrowers could pursue a payday loan, there are two States that permit vehicle title loans but not payday loans and that 15 percent of vehicle title borrowers do not have a checking account and thus may not be eligible for a payday loan.[108]

In the section 1022(b)(2) analysis the Bureau identified, but did not quantify, certain other potential impacts of the Mandatory Underwriting Provisions on consumers' access to credit. Consumers seeking to borrow more than $500 after the 2017 Final Rule's compliance date may find their ability to do so limited because of the cap on the initial loan amount under the conditional exemption and because of the impact of the Rule on vehicle title loans, which tend to be for larger amounts.[109] Additionally, because of the principal step-down feature of the conditional exemption, consumers obtaining loans under that exemption would be forced to repay their loans more quickly than they do today. The Bureau believed that 40 percent of the reduction in payday revenue estimated to result from the Mandatory Underwriting Provisions would be the result of the cap on loan sizes under the conditional exemption and the remainder would be the result of the restriction on the number of loans available to consumers under that exemption coupled with the mandatory underwriting requirement for any additional loans.[110] Finally, the Bureau concluded, based on research concerning the implementation of various State regulations, that although the reduction in the number of storefronts would not substantially affect consumers' geographic access to payday locations in most areas, a small share of potential borrowers will lose easy access to stores.[111]

The Bureau, in the section 1022(b)(2) analysis, went on to observe that consumers who are unable to obtain a new loan because they cannot satisfy the Rule's mandatory underwriting requirement and have exhausted or cannot qualify for a loan under the conditional exemption will have reduced access to credit. They may be forced at least in the short term to forgo certain purchases, incur high costs from delayed payment of existing obligations, incur high costs and other negative impacts by simply defaulting on bills, or they may choose to borrow from sources

[96] *See* 82 FR 54472, 54636–40.

[97] *See id.* at 54814–53.

[98] 12 U.S.C. 5512(b)(2)(A).

[99] *See* 82 FR 54472, 54853–70.

[100] 5 U.S.C. 601 through 612.

[101] 82 FR 54472, 54826–34.

[102] *Id.* at 54826, 54834.

[103] *Id.* at 54826.

[104] *Id.* at 54834.

[105] *Id.* at 54835.

[106] *Id.* at 54840.

[107] *Id.*

[108] *Id.*

[109] *Id.* at 54841.

[110] *Id.*

[111] *Id.* at 54842 & n.1224. Research conducted by the Bureau had found that in one State where regulatory restrictions resulted in a substantial contraction of payday stores, the median distance between stores in counties outside of metropolitan areas increased from 0.2 miles to 13.9 miles. Supplemental Findings at 87.

that are more expensive or otherwise less desirable.[112] Some borrowers may overdraft their checking accounts; depending on the amount borrowed, an overdraft on a checking account may be more expensive than taking out a payday or single-payment vehicle title loan.[113] Similarly, ''borrowing'' by paying a bill late may lead to late fees or other negative consequences like the loss of utility service.[114] Other consumers may turn to friends or family when they would rather borrow from a lender.[115] The Bureau concluded, however, that to the extent the 2017 Final Rule's Mandatory Underwriting Provisions curbed extended borrowing sequences by consumers who did not expect such lengthy sequences, those provisions would have a positive effect on consumer welfare.[116]

III. Outreach

The Bureau has engaged in efforts to monitor and support industry implementation since the 2017 Final Rule was issued. As a part of those efforts, the Bureau has received input from a number of stakeholders regarding various aspects of the 2017 Final Rule. This input has included both concerns about lenders' ability to comply with the Rule and about the broader effects of various substantive provisions of the Rule on covered loans.

In developing this proposal, the Bureau has taken into account both the input it has received from stakeholders through its efforts to monitor and support industry implementation of the 2017 Final Rule as well as comments received in response to other Bureau initiatives, including the Bureau's Call for Evidence series of RFIs issued in spring 2018. The issues that the Bureau has determined are appropriate to revisit are discussed in detail below.

Some of the concerns stakeholders have raised to the Bureau are outside of the scope of this proposal. For example, the Bureau received a rulemaking petition to exempt debit card payments from the Rule's Payment Provisions. The Bureau has also received informal requests related to various aspects of the Payment Provisions or the Rule as a whole, including requests to exempt certain types of lenders or loan products from the Rule's coverage and to delay the compliance date for the Payment Provisions. The Bureau intends to examine these issues and if the Bureau determines that further action is warranted, the Bureau will commence a separate rulemaking initiative (such as by issuing an RFI or an advance notice of proposed rulemaking).

Interagency Consultation. As discussed in connection with section 1022(b)(2) of the Dodd-Frank Act below, the Bureau's outreach included consultation with other Federal consumer protection and prudential regulators. The Bureau has provided other regulators with information about the Bureau's proposals, and received feedback that has assisted the Bureau in preparing this proposal.

Consultation with State and Local Officials. The Bureau's outreach also included calls with State Attorneys General, State financial regulators, and organizations representing the officials charged with enforcing applicable Federal, State, and local laws on small-dollar loans.

Tribal Consultations. The Bureau has engaged in consultation with Indian tribes about this proposal. The Bureau held a consultation on December 19, 2018, at the Bureau's headquarters. All Federally-recognized Indian tribes were invited to this consultation, which generated frank and valuable input from Tribal leaders to Bureau senior leadership and staff about the effects such a proposal could have on Tribal nations and lenders.

In the meantime, the Bureau expects to release a small entity compliance guide to aid compliance with the Payment Provisions of the 2017 Final Rule. The guide will be published on the Bureau's regulatory implementation website for the Rule at *https://www.consumerfinance.gov/policy-compliance/guidance/payday-lending-rule/.*

IV. Legal Authority

Part IV of the **SUPPLEMENTARY INFORMATION** that accompanied the 2017 Final Rule discussed the legal authorities for the Rule.[117] Commenters may refer to that discussion for information about the legal background relating to the Rule. Each of the legal authorities that the Bureau relied upon in the 2017 Final Rule provides the Bureau with discretion to issue rules, and the Bureau preliminarily interprets these authorities to permit the Bureau to exercise that discretion to rescind a previously issued rule. This part IV summarizes the legal authorities that the Bureau views as most relevant to consideration of this proposal to rescind the Mandatory Underwriting Provisions.

The Bureau adopted the Mandatory Underwriting Provisions of the 2017 Final Rule in principal reliance on the Bureau's authority under section 1031(b) of the Dodd-Frank Act.[118] Section 1031(b) of the Dodd-Frank Act provides that the Bureau ''may prescribe rules applicable to a covered person or service provider identifying as unlawful unfair, deceptive, or abusive acts or practices in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service.'' Section 1031(b) of the Dodd-Frank Act further provides that rules under section 1031 may include requirements for the purpose of preventing such acts or practices.

Section 1031(c)(1) of the Dodd-Frank Act provides that the Bureau shall have no authority under section 1031 to declare an act or practice in connection with a transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service, to be unlawful on the grounds that such act or practice is unfair, unless the Bureau has a reasonable basis to conclude that: The act or practice causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers; and such substantial injury is not outweighed by countervailing benefits to consumers or to competition.[119] As the 2017 Final Rule explained, the unfairness provisions of the Dodd-Frank Act are similar to the unfairness provisions under the Federal Trade Commission Act (FTC Act), and the meaning of the Bureau's authority under section 1031(b) is informed by the FTC Act unfairness standard and FTC and other Federal agency rulemakings.[120] When applying section 1031(c) of the Dodd-Frank Act, the Bureau also considers the Federal Trade Commission's ''Commission Statement

[112] *See* 82 FR 54472, 54841.

[113] *Id.*

[114] *Id.*

[115] *Id.*

[116] *Id.* at 54846.

[117] 82 FR 54472, 54519–24.

[118] 12 U.S.C. 5531(b).

[119] 12 U.S.C. 5531(c)(1). Additionally, section 1031(c)(2) of the Dodd-Frank Act provides that in determining whether an act or practice is unfair, the Bureau may consider established public policies as evidence to be considered with all other evidence. Such public policy considerations may not serve as a primary basis for such determination. 12 U.S.C. 5531(c)(2).

[120] 82 FR 54472, 54520. *See also* 15 U.S.C. 41 *et seq.* Section 5(n) of the FTC Act, as amended in 1994, provides that the Federal Trade Commission (FTC) shall have no authority to declare unlawful an act or practice on the grounds that such act or practice is unfair unless the act or practice causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition. In determining whether an act or practice is unfair, the FTC may consider established public policies as evidence to be considered with all other evidence. Such public policy considerations may not serve as a primary basis for such determination. 15 U.S.C. 45(n).

of Policy on Scope of Consumer Unfairness Jurisdiction'' (FTC Policy Statement), the principles of which Congress generally incorporated into section 5 of the FTC Act.[121]

Under section 1031(d) of the Dodd-Frank Act, the Bureau ''shall have no authority . . . . to declare an act or practice abusive in connection with the provision of a consumer financial product or service'' unless the act or practice meets at least one of several enumerated conditions.[122] Section 1031(d)(2) of the Dodd-Frank Act provides, in pertinent part, that an act or practice is abusive when it takes unreasonable advantage of (1) a consumer's lack of understanding of the material risks, costs, or conditions of the product or service; or (2) a consumer's inability to protect the interests of the consumer in selecting or using a consumer financial product or service.

The Bureau's reasons for proposing to rescind its use of unfairness and abusiveness authority in the Mandatory Underwriting Provisions are discussed in parts V.B and V.C below.

In addition to section 1031 of the Dodd-Frank Act, the Bureau relied on other legal authorities for certain aspects of the Mandatory Underwriting Provisions of the 2017 Final Rule.[123] These include the conditional exemption for certain loans in § 1041.6; two provisions (§§ 1041.10 and 1041.11) that facilitate lenders' ability to obtain certain information about consumers' borrowing history from information systems that have registered with the Bureau; and certain recordkeeping requirements in § 1041.12.

In adopting each of these provisions, the Bureau relied on one or more of the following authorities. Section 1022(b)(3)(A) of the Dodd-Frank Act authorizes the Bureau, by rule, to conditionally or unconditionally exempt any class of covered persons, service providers, or consumer financial products or services from any rule issued under Title X, which includes a rule issued under section 1031, as the Bureau determines is necessary or appropriate to carry out the purposes and objectives of Title X. In doing so, the Bureau must take into consideration the factors set forth in section 1022(b)(3)(B) of the Dodd-Frank Act.[124] Section 1022(b)(3)(B) specifies three factors that the Bureau shall, as appropriate, take into consideration in issuing such an exemption.[125] The Bureau also relied, in adopting certain provisions, on its authority under section 1022(b)(1) of the Dodd-Frank Act to prescribe rules as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws.[126] The term Federal consumer financial law includes rules prescribed under Title X of the Dodd-Frank Act, including those prescribed under section 1031.[127] Additionally, in the 2017 Final Rule, the Bureau relied, for certain provisions, on other authorities, including those in sections 1021(c)(3), 1022(c)(7), 1024(b)(7), and 1032 of the Dodd-Frank Act.[128]

The Bureau's decisions to use these authorities were premised on its decision to use its authority under section 1031 of the Dodd-Frank Act. If the Bureau decides to rescind its use of section 1031 authority in the Mandatory Underwriting Provisions, the Bureau preliminarily concludes that it should also rescind its uses of these other authorities in the Mandatory Underwriting Provisions. The specific provisions of the 2017 Final Rule that the Bureau is proposing to rescind are discussed further in the section-by-section analysis in part VI below.

V. Explanation of the Bases for This Proposal To Rescind the Mandatory Underwriting Provisions of the 2017 Final Rule

This part explains the Bureau's reasons for proposing to rescind the use of its unfairness and abusiveness authority under section 1031 of the Dodd-Frank Act in the Mandatory Underwriting Provisions of the 2017 Final Rule. Part V.A reviews certain of the factual predicates and legal conclusions underlying this use of authority. Part V.B sets forth the Bureau's reasons for preliminarily concluding that the Bureau should require more robust and reliable evidence than it supplied in the 2017 Final Rule to support those factual predicates. Part V.C sets forth the Bureau's additional reasons for preliminarily determining that, under sections 1031(c) and (d) of the Dodd-Frank Act, the Bureau no longer identifies an unfair and abusive practice as set out in § 1041.4 of the 2017 Final Rule.[129] In part V.D, the Bureau discusses its consideration of alternatives. In part V.E, the Bureau concludes its analysis and requests comments.

Before addressing these factual and legal issues, the Bureau offers a few preliminary observations to place this rulemaking in its proper context.

Consumers living paycheck to paycheck and with little to no savings to fall back on face challenging financial lives. The Bureau's research has demonstrated that liquid savings and the ability to absorb a financial shock are closely tied to financial well-being.[130] A major focus of the Bureau's consumer education efforts has been, and continues to be, on encouraging savings among consumers. The Bureau also continues to conduct research to understand the efficacy of alternative methods of promoting savings [131] and, more generally, to better understand the specific events that can cause consumers to struggle to make ends meet and the choices consumers face in these circumstances.[132]

[121] *See* Letter from the FTC to Hon. Wendell Ford and Hon. John Danforth, Committee on Commerce, Science and Transportation, United States Senate, Commission Statement of Policy on the Scope of Consumer Unfairness Jurisdiction (Dec. 17, 1980), *reprinted in In re Int'l Harvester Co.,* 104 F.T.C. 949, 1070–88 (1984); *see also* S. Rep. No. 103–130, at 12–13 (1993) (legislative history to FTC Act amendments indicating congressional intent to codify the principles of the FTC Policy Statement).

[122] 12 U.S.C. 5531(d).

[123] *See* 82 FR 54472, 54522.

[124] 12 U.S.C. 5512(b)(3)(A).

[125] 12 U.S.C. 5512(b)(3)(B).

[126] 12 U.S.C. 5512(b)(1). The Bureau also interprets section 1022(b)(1) of the Dodd-Frank Act as authorizing it to rescind or amend a previously issued rule if it determines such rule is not necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, including a rule issued to identify and prevent unfair, deceptive, or abusive acts or practices.

[127] 12 U.S.C. 5481(14).

[128] 12 U.S.C. 5511(c)(3), 12 U.S.C. 5512(c)(7), 12 U.S.C. 5514(b)(7), and 12 U.S.C. 5522.

[129] The Bureau notes that, alongside covered short-term loans, the 2017 Final Rule included covered longer-term balloon-payment loans within the scope of the identified unfair and abusive practice. The Bureau stated that it was concerned that the market for covered longer-term balloon-payment loans, which is currently quite small, could expand dramatically if lenders were to circumvent the Mandatory Underwriting Provisions by making these loans without assessing borrowers' ability to repay. 82 FR 54472, 54583–84. The Bureau did not separately analyze the elements of unfairness and abusiveness for covered longer-term balloon-payment loans. *See id.* at 54583 n.626. Because the Bureau's identification in the Rule as to covered longer-term balloon-payment loans was predicated on its identification as to covered short-term loans, the Bureau preliminarily believes that if the latter is rescinded the former should also be rescinded.

[130] Bureau of Consumer Fin. Prot., *Financial well-being in America,* at 48–49 (2017), *https://files.consumerfinance.gov/f/documents/201709_cfpb_financial-well-being-in-America.pdf.*

[131] The Bureau has published a study of a randomized control trial testing alternative means of encouraging consumers with a prepaid card to place some of their income into a savings vehicle. *See* Bureau of Consumer Fin. Prot., *Tools for saving: Using prepaid accounts to set aside funds* (2016), *https://files.consumerfinance.gov/f/documents/092016_cfpb_ToolsForSavingPrepaidAccounts.pdf.* The Bureau also is studying alternative means of encouraging savings of tax refunds in a research partnership with a major tax preparer.

[132] Bureau of Consumer Fin. Prot., *Making Ends Meet Survey, https://www.consumerfinance.gov/*

Continued

At the same time, the Bureau recognizes that a substantial number of households do not have the ability to withstand financial shocks without the use of credit or other alternatives, such as obtaining money from friends or relatives, cutting back on expenses, or pawning personal property. The Bureau is committed to ensuring that all consumers have access to consumer financial products and services and that the market for ''liquidity loan products'' is fair, transparent, and competitive.[133] For example, the Bureau continues to exercise supervisory and enforcement authority over lenders in this market and the Bureau has brought a number of enforcement actions in the past year against payday lenders that the Bureau determined were engaged in deceptive or other unlawful conduct.[134] The Bureau also continues to monitor this market for risks to consumers and to consider ways of assuring that consumers receive timely and understandable information to make responsible decisions regarding their use of these products.[135] Further, the Bureau has expressed its support for the efforts of other regulators to encourage depository institutions to offer credit products for consumers struggling to make ends meet,[136] and the Bureau's newly-created Office of Innovation plans to work with financial technology (fintech) firms seeking to enter the market for liquidity lending and enhance the competitiveness of the market.

The Mandatory Underwriting Provisions in the 2017 Final Rule, in contrast to the Bureau's efforts discussed above to increase credit access and competition in credit markets, would have the effect of restricting access to credit and reducing competition for these products. Moreover, the Mandatory Underwriting Provisions would impose requirements that would have the effect of reducing credit access and competition in the States which have determined it is in their citizens' interest to be able to use such products, subject to State-law limitations. For the reasons that follow, the Bureau preliminarily believes that neither the evidence cited nor legal reasons provided in the 2017 Final Rule support its determination that the identified practice is unfair and abusive, thereby eliminating the basis for the 2017 Final Rule's Mandatory Underwriting Provisions to address that conduct.

The Bureau notes that, even if it were to finalize the proposed revocation of the Mandatory Underwriting Provisions, doing so would not preclude the agency in the future from imposing one or more alternatives to these provisions, provided that the Bureau has the necessary and appropriate factual and legal bases for doing so.

A. Overview of the Factual Predicates and Legal Conclusions Underlying the Mandatory Underwriting Provisions of the 2017 Final Rule

1. Unfairness

As noted above, section 1031(c)(1)(A) of the Dodd-Frank Act states that the Bureau has no authority to declare an act or practice to be unfair unless the Bureau has a reasonable basis to conclude that the act or practice causes or is likely to cause substantial injury which is not reasonably avoidable by consumers and that such substantial injury is not outweighed by countervailing benefits to consumers or to competition.[137]

In the 2017 Final Rule, the Bureau found that the practice of making covered short-term or longer-term balloon-payment loans to consumers without determining if the consumers have the ability to repay causes or is likely to cause substantial injury to consumers. The Bureau reasoned that where lenders were engaged in this identified practice and the consumer in fact lacks the ability to repay, the consumer will face choices—default, delinquency, and reborrowing, as well as the negative collateral consequences of being forced to forgo major financial obligations or basic living expenses to cover the unaffordable loan payment—each of which the Bureau found in the 2017 Final Rule leads to injury for many of these consumers.[138]

The Bureau went on to address the issue of whether the substantial injury that the Bureau had found was reasonably avoidable by consumers. The Bureau stated that under section 1031(c)(1)(A) of the Dodd-Frank Act for an injury to be reasonably avoidable consumers must ''have reasons generally to anticipate the likelihood and severity of the injury and the practical means to avoid it.'' [139] The Bureau added: ''[t]he heart of the matter here is consumer perception of risk, and whether borrowers are in [a] position to gauge the likelihood and severity of the risks they incur by taking out covered short-term loans in the absence of any reasonable assessment of their ability to repay those loans according to their terms.'' [140]

In applying this standard, the 2017 Final Rule focused on borrowers' ability to predict their individual outcomes prior to taking out loans. The Bureau acknowledged that ''is possible that many borrowers accurately anticipate their debt duration.'' [141] However, the Bureau stated that its ''primary concern is for those longer-term borrowers who find themselves in extended loan sequences'' and that for those borrowers ''the picture is quite different, and their ability to estimate accurately what will happen to them when they take out a payday loan is quite limited.'' [142] That led the Bureau to conclude that ''many consumers do not understand or perceive the probability that certain harms will occur'' [143] and that therefore it would not be reasonable to expect consumers to take steps to avoid injury.[144]

The Bureau based that finding in the 2017 Final Rule primarily on its interpretation of limited data from a study by Professor Ronald Mann (Mann Study), which compared consumers' predictions when taking out a payday loan about how long they would be in debt with administrative data from lenders showing the actual time consumers were in debt.[145] The Bureau

data-research/making-ends-meet-survey/ (''Many households run out of money at one time or another and this survey is designed to help us understand consumer experiences and decisions when money gets tight. Since people's experiences can vary widely, please fill out the survey even if you have not borrowed or run out of money. The information you provide will help shape federal policies to ensure that everyone is treated fairly and respectfully when they borrow money to make ends meet.'').

[133] *See* 12 U.S.C. 1021(a).

[134] *See, e.g., In the Matter of Cash Express, LLC,* Consent Order, CFPB No. 2018–BCFP–0007 (Oct. 24, 2018), *https://files.consumerfinance.gov/f/documents/bcfp_cash-express-llc_consent-order_2018-10.pdf;* Stipulated Final Judgment and Order, *CFPB* v. *Moseley,* Case No. 4:14–cv–00789–SRB (W.D. Mo. Aug. 10, 2018), *https://files.consumerfinance.gov/f/documents/bcfp_hydra_stipulated-final-judgment-order_2018-08.pdf; In the Matter of Triton Management Group, Inc., et al.,* Consent Order, CFPB No. 2018–BCFP–0005 (July 19, 2018), *https://files.consumerfinance.gov/f/documents/bcfp_triton-management-group_consent-order_2018-07.pdf; In the Matter of Enova Int'l, Inc.,* Consent Order, CFPB No. 2019–BCFP–0003 (Jan. 25, 2019), *https://files.consumerfinance.gov/f/documents/cfpb_enova-international_consent-order_2019-01.pdf.*

[135] *See* 12 U.S.C. 5512(c) and 5511(b)(1).

[136] *See* Press Release, Bureau of Consumer Fin. Prot., *Bureau Acting Director Mulvaney Statement on the OCC Short-Term, Small-Dollar Lending Announcement* (May 23, 2018), *https://www.consumerfinance.gov/about-us/newsroom/bureau-acting-director-mulvaney-statement-occ-short-term-small-dollar-lending-announcement/.*

[137] 12 U.S.C. 5531(c)(1).

[138] 82 FR 54472, 54590–94.

[139] *Id.* at 54594.

[140] *Id.* at 54597.

[141] *Id.*

[142] *Id.*

[143] *Id.*

[144] *Id.* at 54594.

[145] Ronald Mann, *Assessing the Optimism of Payday Loan Borrowers,* 21 Supreme Court Econ.

stated that its interpretation of the limited data from this study ''provides the most relevant data describing borrowers' expected durations of indebtedness with payday loan products.'' [146] The Mann Study is discussed further in part V.B.1 below.[147]

In further support of the finding in the 2017 Final Rule that some consumers were not in a position to evaluate the likelihood and severity of these risks and therefore it would not be reasonable to expect consumers to take steps to avoid the injury, the Bureau in the 2017 Final Rule relied on other findings, including those related to the marketing and servicing practices of providers of short-term loans,[148] and on the Bureau's own expertise and experience in supervisory matters and enforcement actions concerning covered lenders in the markets for covered short-term and longer-term balloon-payment loans.[149] These additional factors are discussed in detail in part V.B.2 below.

2. Abusiveness

Section 1031(d)(2) of the Dodd-Frank Act states in pertinent part that the Bureau shall have no authority to declare an act or practice abusive unless the act or practice ''takes unreasonable advantage'' of either (A) ''a lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service''; or (B) ''the inability of the consumer to protect the interests of the consumer in selecting or using a consumer financial product or service.'' [150] The Bureau, in imposing the Mandatory Underwriting Provisions of the 2017 Final Rule, relied on both of these prongs of the abusiveness definition.

With respect to the ''lack of understanding'' prong set forth in section 1031(d)(2)(A) of the Dodd-Frank Act, the Bureau acknowledged in the 2017 Final Rule that consumers who take out covered short-term or longer-term balloon-payment loans ''typically understand that they are incurring a debt which must be repaid within a prescribed period of time and that if they are unable to do so they will either have to make other arrangements or suffer adverse consequences.'' [151] However, in the 2017 Final Rule the Bureau interpreted ''understanding'' to require more than a general awareness of possible negative outcomes. Rather, the Bureau stated that consumers lack the requisite level of understanding if they do not understand both their own individual ''likelihood of being exposed to the risks'' of the product or service in question and ''the severity of the kinds of costs and harms that may occur.'' [152] The Bureau in the 2017 Final Rule found that ''a substantial portion of borrowers, and especially those who end up in extended loan sequences, are not able to predict accurately how likely they are to reborrow.'' [153] This finding also was based primarily on the Bureau's interpretation of limited data from the Mann Study and is discussed further below.[154]

With respect to the alternative ''inability to protect'' prong of abusiveness set forth in section 1031(d)(2)(B) of the Dodd-Frank Act, the Bureau began by finding in the 2017 Final Rule that consumers who lack an understanding of the material costs and risks of a product often will be unable to protect their interests.[155] The Bureau's analysis found that consumers who use short-term loans ''are financially vulnerable and have very limited access to other sources of credit'' and that they have an ''urgent need for funds, lack of awareness or availability of better alternatives, and no time to shop for such alternatives.'' [156] The Bureau also found in the 2017 Final Rule that consumers who take out an initial loan without the lender's reasonably assessing the borrower's ability to repay were generally unable to protect their interests in selecting or using further loans.[157] According to the Bureau, consumers who obtain loans without an ability-to-pay determination and who in fact lack the ability to repay may have to choose between competing injuries—default, delinquency, reborrowing, and default avoidance costs, including forgoing essential living expenses.[158] The Bureau concluded that, ''though borrowers of covered loans are not irrational and may generally understand their basic terms, these facts do[ ] not put borrowers in a position to protect their interests.'' [159]

In support of the conclusion that consumers with payday loans could not protect their own interests, the Bureau relied in the 2017 Final Rule primarily on a survey of payday borrowers conducted by the Pew Charitable Trusts (Pew Study).[160] In the Pew Study, 37 percent of borrowers reported that at some point in their lives they had been in such financial distress that they would have taken a payday loan on ''any terms offered.'' [161] The Bureau viewed this study as showing that borrowers of short-term loans ''may determine that a covered loan is the only option they have.'' [162] The Pew Study is discussed further below in part V.B.3.

After determining that consumers lack understanding of the material risks, costs, or conditions of covered short-term and longer-term balloon-payment loans and that consumers are unable to protect their interests in selecting or using such products, the Bureau went on to conclude in the 2017 Final Rule that by making such loans to consumers without first assessing the consumers' ability to repay, lenders took unreasonable advantage of these consumer vulnerabilities. In reaching this conclusion, the Bureau acknowledged that section 1031(d) of the Dodd-Frank Act ''does not prohibit financial institutions from taking advantage of their superior knowledge or bargaining power'' and that ''in a market economy, market participants with such advantages generally pursue their self-interests.'' [163] The Bureau reasoned, however, that section 1031(d) of the Dodd-Frank Act ''makes plain that there comes a point at which a financial institution's conduct in leveraging its superior information or bargaining power becomes unreasonable advantage-taking'' and the Bureau understood the statute to delegate to the Bureau ''the responsibility for

Rev. 105 (2013), *discussed at* 82 FR 54472, 54568–70, 54592, 54597; *see also id.* at 54816–17, 54836–37 (section 1022(b)(2) analysis discussion of the Mann Study).

[146] 82 FR 54472, 54816.

[147] The Bureau also referenced two academic studies, one of which compared borrowers' belief about the average borrower with data about the average outcome of borrowers and the other of which compared borrowers' predictions of their own borrowing with average outcomes of borrowers in another State. These studies found that borrowers appear, on average, somewhat optimistic about the length of their indebtedness. *See* 82 FR 54472, 54568, 54836. However, the Bureau noted the weaknesses of these studies, *id.* at 54568, and, as discussed, relied primarily on the Mann Study.

[148] *See, e.g., id.* at 54616.

[149] *Id.* at 54505–07.

[150] 12 U.S.C. 5531(d)(2)(A), (B). Section 1031(d)(1) and (d)(2)(C) of the Dodd-Frank Act provide alternative grounds on which a practice may be deemed to be abusive but the Bureau did not rely on either of those grounds for the Mandatory Underwriting Provisions of the 2017 Final Rule.

[151] 82 FR 54472, 54615 (summarizing the Bureau's rationale for the 2016 Proposal).

[152] *Id.* at 54617.

[153] *Id.* at 54615.

[154] *See id.*

[155] *Id.* at 54618.

[156] *Id.* at 54618–20.

[157] *Id.* at 54619.

[158] *Id.*

[159] *Id.* at 54620.

[160] Pew Charitable Trusts, *How Borrowers Choose and Repay Payday Loans* (2013), *http://www.pewtrusts.org/~/media/assets/2013/02/20/pew_choosing_borrowing_payday_feb2013-(1).pdf.*

[161] *See id.,* citing the Pew Study at 20; *see also* 82 FR 54472, 54618–19 (further discussing the Pew Study).

[162] 82 FR 54472, 54619.

[163] *Id.* at 54621.

determining when that line has been crossed.'' [164] The Bureau in the 2017 Final Rule did not identify any specific threshold but nonetheless found that ''many lenders who make such loans have crossed the threshold.'' [165]

In support of its conclusion that lenders take unreasonable advantage of consumers of covered short-term and longer-term balloon-payment loans, the Bureau in the 2017 Final Rule pointed to a range of lender practices including the design of the loan products, the way they are marketed, the absence of underwriting, the limited repayment options and the way those are presented to consumers, and the collection tactics used when consumers fail to repay.[166] The Bureau stated that ''the ways lenders have structured their lending practices here fall well within any reasonable definition'' of what it means to take unreasonable advantage under section 1031(d) of the Dodd-Frank Act.[167] The Bureau then singled out specifically the failure to underwrite and concluded that lenders take unreasonable advantage in circumstances if they make covered short-term loans or covered longer-term balloon-payment loans without reasonably assessing the consumer's ability to repay the loan according to its terms.[168]

B. Reconsidering the Evidence for the Factual Findings in Light of the Impacts of the Mandatory Underwriting Provisions

In questioning here whether the evidence is sufficient for the Bureau's factual findings necessary to support the determinations that the identified practice was unfair and abusive and thereby warrants the imposition of the Mandatory Underwriting Provisions of the 2017 Final Rule, the Bureau is not addressing whether the evidence supporting the factual findings in the 2017 Final Rule would be sufficient to withstand judicial review under the Administrative Procedure Act (APA).[169] Here, even if the evidence is sufficient for the factual findings necessary to support the Bureau's unfairness and abusiveness determinations on which the Mandatory Underwriting Provisions are based, the Bureau believes it is prudent as a policy matter to require a more robust and reliable evidentiary basis to support key findings in a rule that would eliminate most covered short-term and longer-term balloon-payment loans and providers from the marketplace, thus restricting consumer access to these products.

As explained in part II.C, in the regulatory impact analyses accompanying the 2017 Final Rule, the Bureau estimated that the Mandatory Underwriting Provisions would have dramatic effects on the market for payday and single-payment vehicle title loans and on consumers who use those products. The Bureau estimated that the Mandatory Underwriting Provisions would result in a large (55 to 62 percent) contraction of the storefront payday industry—an industry that includes over 2,400 small businesses—and the virtually complete elimination of the single-payment vehicle title industry—an industry that includes over 800 small businesses.[170] The Bureau further estimated in the 2017 Final Rule that, of the current set of payday borrowers, 6 percent would not be able to initiate a payday loan sequence to meet a borrowing need and that 15 percent or more of vehicle title borrowers would not be able to obtain short-term loans.[171] The Bureau further acknowledged that additional borrowers who could obtain loans might nevertheless be unable to borrow the amount of money they needed, and that many borrowers would likely be required to repay their loans more quickly than prior to the Rule—a requirement that could create financial hardship for such consumers.[172] In short, the Mandatory Underwriting Provisions of the Rule would impose substantial burdens on industry, significantly constrain lenders' offering of products, and substantially restrict consumer choice and access to credit. All this would occur notwithstanding the judgments that the various States have made to permit lenders to offer and consumers to choose such products subject to certain limitations.

The Bureau preliminarily believes that the dramatic effects on consumers' ability to choose credit and on lenders' ability to offer them such credit that would follow from prohibiting the identified practice has significant implications for how the Bureau ought to assess the evidentiary support for the predicate factual findings. For purposes of this rulemaking proposal, the Bureau need not reconsider that the 2017 Final Rule found that the identified practice causes or is likely to cause substantial injury. However, the Bureau is concerned about whether the evidence in this instance provides a ''reasonable basis'' to find that (1) the identified injury ''is not reasonably avoidable by consumers'' for purposes of an unfairness analysis; (2) that there is either a ''lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service'' or an ''inability of the consumer to protect the interests of the consumer in selecting or using a consumer financial product or service'' for purposes of an abusiveness analysis.[173] The FTC Policy Statement explained that reasonable avoidability for purposes of unfairness analysis is premised on the fact that ''[n]ormally we expect the marketplace to be self-correcting, and we rely on consumer choice—the ability of individual consumers to make their own private purchasing decisions without regulatory intervention—to govern the market.'' [174]

If a rule could have such dramatic impacts on consumer choice and access to credit, the Bureau preliminarily believes that it would be reasonable under the Dodd-Frank Act and prudent to have robust and reliable evidence to support the key finding that consumers cannot reasonably avoid that injury. Similarly, the Bureau preliminarily believes that it would be reasonable under the Dodd-Frank Act and prudent to have robust and reliable evidence to support key findings of about ''lack of understanding'' and an ''inability to protect'' as needed to establish abusiveness.

Accordingly, the Bureau preliminarily concludes that it should have a robust and reliable evidentiary basis for key findings with respect to ''reasonable avoidability,'' ''lack of understanding,'' and ''inability to protect'' that are essential to the Mandatory Underwriting Provisions in the 2017 Final Rule. For the reasons discussed below, the Bureau preliminarily believes that the evidence on which the Mandatory Underwriting Provisions of the 2017 Final Rule rests is not sufficiently robust and reliable to support such findings regardless of whether it would be sufficient to withstand judicial review under the APA, and that rescission of the Mandatory Underwriting Provisions is therefore appropriate.

[164] *Id.*

[165] *Id.* at 54622.

[166] *Id.* at 54622–23.

[167] *Id.* at 54623.

[168] *Id.*

[169] 5 U.S.C. 500 *et seq.*

[170] 82 FR 54472, 54479, 54492.

[171] *Id.* at 54609. Specifically, the Bureau noted in the 2017 Final Rule that two States that permit vehicle title lending do not permit payday lending. In addition, 15 percent of vehicle title borrowers do not have a checking account, and thus may not be eligible for a payday loan. *Id.* at 54840.

[172] *Id.* at 54840–41.

[173] 12 U.S.C. 5531(c), (d).

[174] *See* FTC Policy Statement, *Int'l Harvester,* 104 F.T.C. 949, 1074.

1. The Mann Study and the Findings Based on It

As discussed in part V.A.1, in determining that the identified practice is unfair, in the 2017 Final Rule the Bureau concluded, as required by section 1031(c)(1)(A) of the Dodd-Frank Act, that the practice causes or is likely to cause substantial injury to consumers and that this injury is not reasonably avoidable by consumers.[175] That latter determination rested on the Bureau's finding that many consumers do not have a specific understanding of their personal risks and cannot accurately predict how long they will be in debt after taking out covered short-term or longer-term balloon-payment loans.[176] That finding was based primarily on the Bureau's interpretation of limited data from the Mann Study, which the Bureau described in the 2017 Final Rule as providing the most relevant data describing borrowers' expected durations of indebtedness with payday loan products.[177]

Similarly, as discussed in part V.A.2, in determining that the practice of making covered short-term or longer-term balloon-payment loans without assessing consumers' ability to repay is abusive under section 1031(d)(2)(A) of the Dodd-Frank Act, the Bureau found in the 2017 Final Rule that many consumers do not understand the material risks, cost, or conditions of such loans, because they do not have a specific understanding of their individualized risk and cannot accurately predict how long they will be in debt after taking out these loans.[178] That finding, too, was based primarily on the Bureau's interpretation of limited data from the Mann Study.[179]

In the Mann Study, a set of consumers, when applying for a loan, completed a survey that asked for their expectations as to the length of time they would be in debt after taking out the loan. Professor Mann compared those answers to administrative data from lenders showing the total length of time it took for the borrower to pay off the loan and not reborrow from the same lender for a full pay period.[180] Based on his analysis of the data, Professor Mann concluded that most borrowers anticipate that they will not be free of debt at the end of the initial loan term and instead will need to reborrow.[181] He also concluded that borrowers' estimates of an ultimate repayment date ''are realistic.'' [182] Professor Mann further concluded that this evidence indicates that most borrowers ''have a good understanding of their own use of the product.'' [183]

In the 2017 Final Rule, the Bureau acknowledged Professor Mann's quantitative findings but ''dispute[d] his interpretation of those findings.'' [184] Professor Mann provided the Bureau with certain charts and graphs from his study, including scatterplots of borrowers' reborrowing expectations and outcomes.[185] The Bureau analyzed these materials and concluded based on them that borrowers who experienced very long reborrowing sequences do not anticipate these outcomes and that, in general, borrowers' predictions of their outcomes were uncorrelated with their outcomes.[186] The Bureau noted, for example, that based on the limited materials it received from Professor Mann, none of the borrowers who experienced sequences of longer than 140 days (10 biweekly loans) predicted that outcome, and that none of the borrowers who predicted such an outcome actually experienced it.[187] The Bureau further stated in the 2017 Final Rule that its analysis of these limited materials found no correlation between individual consumers' predictions of their outcomes and their actual outcomes.[188]

The Bureau initially offered its interpretation of limited data from the Mann Study in its 2016 Proposal.[189] In response, Professor Mann submitted a comment taking issue with the Bureau's analysis. In his comment, Professor Mann observed that the Bureau had made ''substantial use'' of his study but described the Bureau's use of the work as ''inaccurate and misleading,'' and deemed the Bureau's summary of his work ''unrecognizable.'' [190] In issuing the Rule, the Bureau discussed Professor Mann's comment and concluded that his objections ''reflect more of a difference in emphasis than a disagreement over the facts.'' [191]

Upon further consideration, there are clear limitations to the Mann Study which the Bureau now believes undermine the reliability and probative value of the Bureau's interpretation of the limited data it received from Professor Mann as the main basis for the Bureau to make findings concerning consumer awareness of potential outcomes from taking out payday loans from payday lenders throughout the United States. The Mann Study involved a single payday lender in just five States and was administered at a limited number of locations.[192] A study focusing on a single lender or limited number of lenders may not necessarily be representative of the variety of payday lenders across the United States. In addition, these five States also are not necessarily representative of payday lending nationally.[193] Thus, the Mann Study's findings and the Bureau's interpretation of limited data from that study are most informative about what prospective customers of this single lender at these locations in these States understood about how long they would need to borrow. While the Mann Study may provide useful insights as to these potential customers, consumers using other lenders or in other places might or might not have the same understanding as those in the Mann Study. Because consumer understandings and expectations may be informed by the information consumers are provided—and because that information can vary from lender to lender and State to State [194]—the Bureau preliminarily concludes the Mann Study and the Bureau's interpretation of limited data from that study are not a sufficiently robust and representative basis to make general findings about all lenders making payday loans to all borrowers in all States, let alone to generalize about borrowers using short-term vehicle title

[175] 82 FR 54472, 54596.

[176] *Id.* at 54597.

[177] *Id.* at 54816.

[178] *Id.* at 54597.

[179] *Id.*

[180] *See* Mann Study at 117.

[181] *Id.* at 128.

[182] *Id.* at 109.

[183] *Id.*

[184] 82 FR 54472, 54836. The Bureau specifically relied on a scatterplot provided by Professor Mann depicting his respondents' predicted durations of indebtedness vs. the time they actually spent in debt, and the corresponding regression line. Professor Mann also provided the Bureau with other data, including histograms of his respondents' days to clearance, prediction errors, borrowing experience, etc. However, the Bureau did not have access to the complete data from Professor Mann's study, including individual-level survey responses that would allow the data provided in the figures to be linked to the other information collected in the Mann Study.

[185] *See* 82 FR 54472, 54836 nn.1190–91.

[186] *Id.* at 54836–37; *see also id.* at 54569.

[187] *Id.* at 54569.

[188] *Id.* at 54570.

[189] *See* 81 FR 47864, 47928–29.

[190] Comment submitted by Ronald Mann, Docket No. CFPB–2016–0025–141822, at 1.

[191] 82 FR 54472, 54569.

[192] *See* Mann Study at 116.

[193] The Mann Study noted that rollover loans are technically prohibited in all five of the States in which payday borrowers were surveyed. Mann Study at 114. Further, same-day rollover transactions are not possible in Florida, which has a 24-hour cooling-off period, and are limited in Louisiana, which permitted rollovers only upon partial payment of the principal. *Id.* Over half of the survey participants were in Florida and Louisiana alone. *Id.* at 117 & tbl. 1.

[194] 82 FR 54472, 54486 (identifying detailed disclosures required of payday lenders under Texas law), and *id.* at 54577 (noting that some jurisdictions require lenders to provide specific disclosures in order to alert borrowers of potential risks).

loans or other types of covered short-term or longer-term balloon-payment loans, which the Mann Study and the Bureau's interpretation of limited data from that study did not even address.

For all of these reasons, the Bureau is now reconsidering its decision to rely so heavily on its interpretation of limited data from a study with such a narrow focus as the basis for a rule with effects of the magnitude of those estimated to arise from the Mandatory Underwriting Provisions of the 2017 Final Rule. In this case, more research asking consumers about their *ex ante* understanding of their own, or others', expected outcomes, and possibly various measures of these distributions, would increase the evidentiary base. Without additional research involving more lenders and more locations, it is difficult to be confident that the conclusions that the Bureau drew in the 2017 Final Rule from its interpretations of the limited data from the Mann Study can be applied generally to payday lenders and payday loans across the United States. Consequently, the Bureau preliminarily believes that, especially given the dramatic market impacts of the 2017 Final Rule's Mandatory Underwriting Provisions on the future ability of consumers who want to do so to choose these products, the Mann Study's findings and the Bureau's interpretation of limited data from that study were not adequately robust and representative to serve as the primary basis of the Bureau's findings. Additionally, the Bureau notes that in two industry-sponsored surveys conducted of consumers who had successfully paid off a payday loan, the overwhelming majority of respondents reported that when they took out their first loan they understood well or quite well how long it would take to ''completely repay the loan'' and that they were able to repay their loan in the amount of time expected.[195]

Finally, the Bureau notes that, in two academic papers based upon surveys of payday borrowers, only a small portion—around 11 or 12 percent of borrowers—reported that they were somewhat or very dissatisfied with their most recent payday loan experience.[196] While the Bureau notes there are concerns about the representativeness of the samples surveyed, if it took consumers longer to pay off payday loans than they thought it would, one might expect consumers to be dissatisfied with their payday loans. They were not. These results thus add to the Bureau's preliminary conclusion that its interpretation in the 2017 Final Rule of limited data from the Mann Study provides an insufficiently robust and representative foundation for the findings on which the Bureau relied in concluding that its identified practice was unfair and abusive.

For all these reasons and as discussed further below, the Bureau preliminarily believes the limited data from the Mann Study was not sufficiently robust and representative, in light of the Rule's dramatic impacts in restricting consumer access to payday loans, to be the linchpin for a series of key findings, including that (1) consumers who use covered short-term or longer-term balloon-payment loans lack the understanding needed to reasonably avoid injury from lenders' failure to assess consumers' ability to repay those loans; (2) consumers lack understanding of the material risks, costs, or conditions of such loans; and (3) consumers' lack of understanding contributes to their inability to protect their interests in the selection or use of such loans. The Bureau also preliminarily believes that it cannot, in a timely and cost-effective manner for itself and for lenders and borrowers, develop evidence that might or might not corroborate the Mann Study results that the Bureau relied upon to support the key findings the Bureau set forth in the 2017 Final Rule.[197] The Bureau invites comment on the robustness and representativeness of the evidence supporting these findings, including comment on the weight the Bureau placed on its interpretation of limited data from the Mann Study and on any other evidence that may bear on these findings.

2. Other Evidence on the Consumer Understanding of Risk

The Bureau, in the 2017 Final Rule, pointed to other evidence and made a number of additional factual findings in support of its key finding, also principally based on the Mann Study, that consumers were not able to predict accurately the specific likelihood of their individual risk of entering a long reborrowing sequence from taking out a covered short-term or longer-term balloon-payment loan.

For instance, the Bureau stated in the 2017 Final Rule that the way in which covered short-term and longer-term balloon-payment loans are structured and marketed, in addition to lenders' practices in encouraging consumers to reborrow, are factors that exacerbate and contribute to consumer confusion and lack of understanding as to whether they will end up in long reborrowing sequences.[198] Further, the Bureau relied on its expertise and experience in supervisory matters and enforcement actions concerning covered lenders in making judgments about the covered short-term and longer-term balloon-payment loan markets.[199] That is, the Bureau determined on the basis of its expertise and experience that the available data—primarily its interpretation of limited data from the Mann Study—corroborated its belief that ''a large number of consumers do not understand even generally the likelihood and severity of [the] risks'' associated with taking out a short-term loan.[200]

[195] *See id.* at 54570 (discussing studies). The 2017 Final Rule noted a number of limitations in these studies, including a sampling bias resulting from surveying only successful repayers and the fact that these were *ex post* surveys asking about expectations at an earlier point in time. *Id.* Despite these limitations, these studies tend to corroborate concerns about the robustness and representativeness of the Bureau's key findings based on its interpretation of limited data from the Mann Study.

[196] *See* Gregory Elliehausen & Edward Lawrence, *Payday Advance Credit in America: An Analysis of Customer Demand,* at 52 (2001), *http://citeseerx.ist.psu.edu/viewdoc/download;jsessionid=F5246C700D90651E3340EF590C686B41?doi=10.1.1.200.7740&rep=rep1&type=pdf*; Gregory Elliehausen, *An Analysis of Consumers' Use of Payday Loans,* at 41 (2009), *https://www.researchgate.net/publication/237554300_AN_ANALYSIS_OF_CONSUMERS'_USE_OF_PAYDAY_LOANS; see also* Christy A. Bronson & Daniel J. Smith, *Swindled or Served?: A Survey of Payday Lending Customers in Southeast Alabama,* 40 S. Bus. & Econ J. 16 (2016) (finding general satisfaction with payday lending in non-random survey of 48 people in Southeast Alabama).

[197] As the Bureau noted in the 2017 Final Rule, ''[m]easuring consumers' expectations about re-borrowing is inherently challenging.'' 82 FR 54472, 54568.

[198] *See, e.g., id.* at 54555; *see also id.* at 54561 (explaining that ''[v]arious lender practices exacerbate the problem by marketing to borrowers who are particularly likely to wind up in long sequences of loans, by failing to screen out borrowers who are likely to wind up in long-term debt or to establish guardrails to avoid long-term indebtedness, and by actively encouraging borrowers to continue to reborrow when their single-payment loans come due.''). The Bureau, in the 2017 Final Rule, pointed to a host of lender practices before, during, and after origination that the Bureau said tend to diminish consumers' ability to avoid or mitigate harms and protect their own interests in selecting or using covered products. *Id.* at 54560–61. These included marketing that portrays the product as a short-term financial fix rather than emphasizing the substantial risks of reborrowing, screening only for immediate default risk at origination rather than conducting more vigorous underwriting, various practices in connection with taking account access and vehicle title, the presentation of repayment options as *only* allowing for full repayment or rollovers, and failing to inform consumers of ''off-ramp'' payment options. *Id.* at 54561–65.

[199] *See id.* at 54506–07.

[200] *Id.* at 54597–98. The Bureau also interpreted one survey of payday borrowers, about how long the average borrower would have a payday loan outstanding, to suggest that borrowers were ''somewhat optimistic'' about reborrowing behavior generally. *See id.* at 54568 & n.542 (citing Marianne Bertrand & Adair Morse, *Information Disclosures,*

These additional findings,[201] in essence, supplemented and were ultimately subordinate to the Bureau's interpretation of limited data from the Mann Study, which was the linchpin for the Bureau's findings in the 2017 Final Rule that consumers lacked an understanding of the possible risks and consequences associated with taking out payday loans. The Bureau does not believe that this additional evidence and other findings suffice to compensate for the insufficient robustness and representativeness of the limited data from the Mann Study.

3. The Pew Study and the Finding Based on It

As discussed in part V.A.2 above, the Bureau in the 2017 Final Rule also found that consumers who use covered short-term or longer-term balloon-payment loans lack the ability to protect their interests in selecting or using these loans, and that lenders' practice of making such loans without assessing consumers' ability to repay took unreasonable advantage of that vulnerability.[202] The predicate finding that these consumers lack the ability to protect themselves relied heavily on a survey of payday borrowers conducted by the Pew Charitable Trusts, discussed above, in which 37 percent of borrowers answered in the affirmative to the question ''Have you ever felt you were in such a difficult situation that you would take [a payday loan] on pretty much any terms offered?'' [203] The Bureau interpreted the survey results as demonstrating that these consumers, if faced with an immediate need for cash, lack the ability to ''effectively identify or develop alternatives that would vitiate the need to borrow [or] allow them to borrow on terms within their ability to repay.'' [204]

The Bureau preliminarily believes that the Pew Study is an inadequate basis for the Bureau in the 2017 Final Rule to have drawn broad conclusions about consumers' ability to take actions to protect their own interests. To begin with, the survey asked respondents about their feelings, not about their actions. Respondents were not asked whether they had, in fact, taken out a payday loan at a time when they said they would have done so on ''pretty much any terms.'' That some respondents at some time felt they had been at some point willing to take a payday loan on any terms does not indicate what they actually did at that time or how often they took out payday loans in general. Further, the Pew Study itself contains a number of other findings that cast doubt on whether, as the Bureau found, payday borrowers cannot explore available alternatives that would protect their interests. For example, the Pew Study found that 58 percent of respondents had trouble meeting their regular monthly bills half the time or more, suggesting that these borrowers are, in fact, accustomed to exploring alternatives to deal with cash shortfalls.[205] Similarly, in a prior survey, the Pew Charitable Trusts found that if payday loans were not available, borrowers would cut back on expenses (81 percent), delay paying some bills (62 percent), borrow from friends or family (57 percent), or pawn personal property (57 percent) [206]—further raising questions with respect to the Bureau's reliance in the 2017 Final Rule on the Pew Study to find that consumers cannot explore other alternatives and thus cannot protect their interests. These results indicate that consumers are familiar with mechanisms other than payday loans to deal with cash shortfalls.

Other research casts further doubt on the weight the Bureau placed in the 2017 Final Rule on the Pew Study and on the robustness and reliability of the evidence to support the Bureau's finding that consumers who use payday or other covered short-term or longer-term balloon-payment loans lack the ability to explore alternatives. One study suggests that, precisely because they are financially vulnerable, payday borrowers are accustomed to facing cash shortfalls and have used a variety of different approaches for dealing with such situations. Some involve juggling of expenses, while others involve accessing alternative sources of cash, including overdraft, pawn loans, and informal borrowing. Research released since the 2017 Final Rule underscores the point. In a recent report issued by the Board regarding the economic well-being of U.S. households, consumers who reported that they would have difficulty covering a $400 emergency expense were asked how they would cope were such an emergency to arise. These consumers pointed to a variety of potential mechanisms including borrowing from a friend or family member (26 percent) or selling something (19 percent). Only 5 percent reported that they would use a payday loan or similar product.[207] Although it is possible that those who said they would use a payday loan are systematically different from other respondents and do not have other options available to them, this Board report at least raises significant questions as to whether that is so.

The Bureau also suggested in the 2017 Final Rule that consumers who take out a covered short-term or longer-term balloon-payment loan may do so because of the ''lack of . . . availability of better alternatives.'' [208] Here, too, the Pew Study is inconclusive. It found that many borrowers repaid their loans using methods they could have used instead of taking out a payday loan in the first instance, suggesting that these borrowers may have had other alternatives at the time they took out the

Cognitive Biases and Payday Borrowing, 66 J. of Fin. 1865 (2011)). The survey asked the question: ''What's your best guess of how long it takes the average person to pay back in full a $300 payday loan?'' (quoted at 82 FR 54568). However, the Bureau did not address the overall findings from the survey that, though responses varied widely, the mean response to the survey was ''close to [the] range'' of other data indicating how long borrowers actually took to pay back their loans. *See* Bertrand & Morse at 1878.

[201] The Bureau in the 2017 Final Rule cited research stating that certain consumer behaviors may make it difficult for them to predict accurately the future implications of taking out a covered short-term or longer-term balloon-payment loan. As the Bureau made clear, however, this research helped to explain the Bureau's findings from the Mann Study but was not in itself an independent basis to conclude that consumers do not predict whether they will remain in reborrowing sequences. 82 FR 54472, 54571 (explaining that ''[r]egardless of the underlying explanation, the empirical evidence indicates that many borrowers who find themselves ending up in extended loan sequences did not expect that outcome.''). Other data cited in the 2017 Final Rule to support consumers' underestimation of the cost and timing of repaying payday loans appears to be cited out of context. *See, e.g., id.* at 54571 (citing Rob Levy & Joshua Sledge, *A Complex Portrait: An Examination of Small-Dollar Credit Consumers,* (Ctr. for Fin. Serv. Innovation, 2012), *https://www.fdic.gov/news/conferences/consumersymposium/2012/A%20Complex%20Portrait.pdf*). The Bureau suggested that users of payday and vehicle title loan products were more likely to underestimate the cost of their loans compared to users of other credit products. On further review, the Bureau does not believe that this statement presents a complete picture, because the cited study asked for predictions on cost and timing regarding small dollar loan products only, not more common credit products like credit cards. *See* 82 FR 54472, 54571; Levy & Sledge at 21. The Bureau also did not address the study's findings identifying many users of payday and title loan products who found the loans less costly than expected, and found themselves in debt for less time than expected. *See* Levy & Sledge at 21.

[202] 82 FR 54472, 54614.

[203] Pew Study at 6, 21, 60.

[204] 82 FR 54472, 54619.

[205] Pew Study at 9.

[206] Pew Charitable Trusts, *Payday Lending in America: Who Borrows, Where They Borrow, and Why,* at 16 (2012), *http://www.pewtrusts.org/~/media/legacy/uploadedfiles/pcs_assets/2012/pewpaydaylendingreportpdf.pdf.*

[207] Bd. of Governors of the Fed. Reserve Sys., *Report on the Economic Well-Being of U.S. Households in 2017,* at 21 (2018), *https://www.federalreserve.gov/publications/files/2017-report-economic-well-being-us-households-201805.pdf.*

[208] 82 FR 54472, 54620.

loan.[209] Other recent research has emphasized the extent to which borrowing among friends and families is common among the most financially vulnerable.[210] Moreover, in the 2017 Final Rule, the Bureau itself reviewed a range of options that it believed would be available and accessible to consumers if they were unable to obtain a covered short-term or longer-term balloon-payment loan as a result of the ability-to-repay determination required by the Rule.[211] These include installment loans offered by payday and vehicle title lenders and other providers which are replacing short-term products,[212] as well as emerging fintech products such as wage advances and no-cost advances.

Finally, the Bureau notes that in 17 States and the District of Columbia, payday loans are prohibited. Consumers in these States that find themselves in difficult financial circumstances rely primarily on options other than covered short-term and longer-term balloon-payment loans,[213] raising questions about the Bureau's finding that consumers in States in which payday loans are not prohibited cannot do so.

For all the reasons set forth above, the Bureau preliminarily believes that the Pew Study does not provide a sufficiently robust and reliable basis for the Bureau's finding in the 2017 Final Rule that consumers who use covered short-term or longer-term balloon-payment loans lack the ability to protect themselves in selecting or using these products. And as with the Mann Study, as discussed above, the Bureau preliminarily believes that it cannot, in a timely and cost-effective manner for itself and for lenders and borrowers, develop sufficiently robust and reliable evidence that might or might not corroborate the Pew Study results. The Bureau seeks comment on the robustness and reliability of the evidence supporting this key finding, including comment on the weight the Bureau placed on the Pew Study, and on any other evidence that may bear on this finding.

4. Other Evidence Pertaining to Inability To Protect

In addition to the Pew Study, and as set out in part V.B.2 above, the Bureau pointed in the 2017 Final Rule to the structure of the loans themselves, expressing the belief that their short repayment periods and balloon payments may make it substantially harder for consumers to work themselves out of debt than if they were subject to a longer, slower repayment schedule.[214] As support for the findings in the 2017 Final Rule that the identified practice was abusive, the Bureau also pointed to a host of lender practices before, during, and after origination that the Bureau said tend to diminish consumers' ability to avoid or mitigate harms and protect their own interests in selecting or using covered products.[215]

As set forth in part V.B.2 above, the data identified in the 2017 Final Rule suggests that many consumers do use short-term loans as marketed—that is, as short-term or stop-gap measures, without initiating a prolonged sequence of reborrowing.[216] Further, evidence in the 2017 Final Rule showed that, while some lenders may discourage the use of repayment plans or off-ramps or otherwise encourage extended reborrowing, many consumers nevertheless avoid long reborrowing sequences and pay off their covered short-term and longer-term balloon-payment loans with no, or minimal, renewals.[217]

5. Conclusion

Based on its analysis in parts V.B.1 through V.B.4 above, the Bureau believes that the key evidentiary grounds relied upon in the 2017 Final Rule were insufficiently robust and reliable to support the findings of an unfair and abusive practice as identified in § 1041.4. The Bureau preliminarily concludes that neither the Bureau's interpretation of limited data from the Mann Study nor other sources on which the Bureau relied provide a sufficiently robust and representative evidentiary basis, in light of the expected impacts of the 2017 Final Rule, to conclude that consumers do not have a specific understanding of their personal risks and cannot accurately predict whether they will remain in long reborrowing sequences after taking out covered short-term and longer-term balloon-payment loans. The Bureau also preliminarily concludes that the Pew Study, and other evidence cited in support of the Pew Study, do not provide a sufficiently robust and reliable basis to conclude that consumers who use covered short-term or longer-term balloon-payment loans lack the ability to protect themselves in selecting or using these products. The Bureau further preliminarily concludes that the weaknesses in the evidentiary record on which the Bureau relied for the Mandatory Underwriting Provisions in the 2017 Final Rule is particularly problematic as a policy matter because these provisions will have dramatic effects, including eliminating many lenders and decreasing consumer access to financial products that they may want. Accordingly, the Bureau preliminarily believes that these conclusions are sufficient to rescind § 1041.4.

C. The Legal Findings Under Section 1031 of the Dodd-Frank Act

In addition to, and independent from, its preliminary determination that the evidence relied upon in the 2017 Final Rule was insufficiently robust and reliable to support the Bureau's key findings underlying the unfairness and abusiveness determinations, the Bureau also preliminarily determines that the standards for unfairness and abusiveness used in the 2017 Final Rule were problematic for the reasons discussed below.

Specifically, as to the Bureau's unfairness findings in the 2017 Final Rule, the Bureau is making this preliminary conclusion about how the 2017 Final Rule applied: (1) Section 1031(c)(1)(A) of the Dodd-Frank Act relating to determining whether injuries are reasonably avoidable, and (2) section 1031(c)(1)(B) about whether substantial injury is outweighed by countervailing benefits. The Bureau is also making this preliminary conclusion, as to the Bureau's abusiveness findings in the 2017 Final Rule, about how the 2017 Final Rule applied: (1) Section 1031(d)(2)(A) relating to determining whether consumers lack understanding of the material costs, risks, or conditions of a consumer financial product or service; and (2) section 1031(d)(2) relating to the determination that lenders took unreasonable advantage of consumers by making covered short-term and balloon-payment loans without reasonably assessing borrowers' ability to repay such loans according to their terms.

Accordingly, as discussed further below, the Bureau preliminarily

[209] Alternatives to borrowing identified by the Pew Study included receiving funds from family and friends, using tax refunds, pawning or selling items, using credit cards, and taking out a loan from a bank or credit union. Pew Study at 36–38.

[210] *See, e.g.,* Jonathan Morduch and Julie Siwicki, *In and Out of Poverty: Episodic poverty and income volatility in the U.S. Financial Diaries,* at 17 (2017), *https://www.usfinancialdiaries.org/paper2.*

[211] 82 FR 54472, 54609–11.

[212] *See, e.g.,* John Hecht, *Short Term Lending Update: Moving Forward with Positive Momentum* (2018) (Jefferies LLC, slide presentation) (on file); *see also* 82 FR 54472, 54609.

[213] 82 FR 54472, 54485 (noting that at least 11 States and jurisdictions that previously permitted payday lending took steps to restrict or eliminate such lending altogether).

[214] *Id.* at 54561.

[215] *Id.* at 54560–61.

[216] *Id.* at 54570–71.

[217] *Id.* at 54704.

believes that the 2017 Final Rule should not have concluded that the identified practice was unfair and abusive. This preliminary conclusion is independent from the Bureau's preliminary conclusions regarding the evidentiary basis for the 2017 Final Rule. In other words, even if the evidence on which the 2017 Final Rule was based was sufficiently robust and reliable, the Bureau preliminarily believes that the Bureau should not have concluded in the 2017 Final Rule that the identified practice was unfair and abusive because the agency used problematic approaches, as discussed below, in applying the standards for unfairness and abusiveness.

1. Reasonable Avoidability

The Bureau determined in the 2017 Final Rule that making covered short-term or longer-term balloon-payment loans without reasonably assessing a borrower's ability to repay the loan according to its terms is an unfair act or practice. In making this determination, the Bureau concluded that this practice: (1) Caused or was likely to cause substantial injury to consumers; (2) that that injury was not reasonably avoidable by consumers; and (3) that the injury was not outweighed by countervailing benefits to consumers or competition.[218] The Bureau believes the approach it used to reach these conclusions was problematic, as discussed below, and it now preliminarily proposes a better approach to applying the reasonable avoidability standard, incorporating the lessons of relevant precedent by the FTC. The Bureau preliminarily concludes that, even assuming that the factual findings in the 2017 Final Rule were correct and sufficiently supported, those findings did not establish that consumers could not reasonably avoid harm under the best interpretation of the statute, informed by relevant precedent.

As discussed in part V.A.1, the Bureau, in the Mandatory Underwriting Provisions of the 2017 Final Rule, interpreted section 1031(c)(1)(A) of the Dodd-Frank Act to mean that for an injury to be reasonably avoidable consumers must ''have reason generally to anticipate the likelihood and severity of the injury and the practical means to avoid it.'' [219] As discussed above, the Bureau interpreted this standard in the 2017 Final Rule context as requiring consumers to have a specific understanding of the magnitude and severity of their personal risks such that they could accurately predict how long they would be in debt after taking out a covered short-term or longer-term balloon-payment loan.[220] The Bureau acknowledged that such borrowers ''typically understand that they are incurring a debt which must be repaid within a prescribed period of time and that, if they are unable to do so, they will either have to make other arrangements or suffer adverse consequences.'' [221] The Bureau also acknowledged that the Mann Study on which the Bureau so heavily relied found that most payday borrowers expected some repeated sequences of loans.[222] Nonetheless, the Bureau stated that ''[t]he heart of the matter here is consumer perception of risk, and whether borrowers are in [a] position to gauge the likelihood and severity of the risks they incur by taking out covered short-term loans in the absence of any reasonable assessment of their ability to repay those loans according to their terms.'' [223] Because it found that consumers are not in a position to evaluate the risks, the Bureau found that consumers could not reasonably avoid the injuries.[224]

The Bureau is concerned that in the 2017 Final Rule it applied a problematic standard for reasonable avoidability under section 1031(c)(1)(A) of the Dodd-Frank Act.

In applying unfairness principles, the FTC and courts have long recognized that for an injury to be reasonably avoidable consumers must not only ''know the physical steps to take in order to prevent it'' but also ''understand the necessity of actually taking those steps.'' [225] Put differently, ''an injury is reasonably avoidable if consumers have reason to anticipate the impending harm and the means to avoid it.'' [226] The FTC Policy Statement emphasizes the importance of consumer choice in unfairness analysis. As the FTC Policy Statement explains, unfairness authority is not intended to ''second-guess the wisdom of particular consumer decisions'' and consumers are expected to ''survey the available alternatives, choose those that are most desirable, and avoid those that are inadequate or unsatisfactory.'' [227] Unfairness matters typically are brought to halt ''some form of seller behavior that unreasonably creates or takes advantage of an obstacle to the free exercise of consumer decisionmaking.'' [228] The Bureau finds these precedents informative as the Bureau considers how to apply section 1031(c)(1)(A) of the Dodd-Frank Act.

In assessing whether consumers could reasonably avoid harm, the Bureau in the 2017 Final Rule concluded that they could not without a specific understanding of their individualized risk, as determined by their ability to accurately predict how long they would be in debt after taking out a covered short-term or longer-term balloon-payment loan.[229] Even though the Bureau used this interpretation in the 2017 Final Rule, the Bureau now preliminarily concludes that consumers need not have a specific understanding of their individualized likelihood and magnitude of harm such that they could accurately predict how long they would be in debt after taking out a covered short-term or longer-term balloon-payment loan for the injury to be reasonably avoidable. To require that consumers know their individualized likelihood and magnitude of harm from an act or practice to reasonably avoid their effects inflates the injury from them, would practically speaking shift the burden to lenders to make such determinations, thereby deterring lenders from offering products or product features, which effectively suppresses rather than facilitates consumer choice.

This particular problem with the 2017 Final Rule is illustrated by how the Bureau responded to several comments that urged the Bureau to mandate consumer disclosures instead of imposing an ability-to-repay requirement. In rejecting that suggestion, the Bureau stated that ''generalized or abstract information'' about the attendant risks would ''not inform the consumer of the risks of the particular loan in light of the consumer's *particular* financial situation.'' [230] The Bureau went on to state that ''[t]he only disclosure that the Bureau could envision that could come close to positioning consumers to mitigate the unfair and abusive practice effectively would be an *individualized* forecast'' and that such ''an individualized disclosure might require more compliance burden than the

[218] *Id.* at 54588.

[219] *Id.* at 54594.

[220] *Id.* at 54594–96.

[221] *Id.*at 54615.

[222] *Id.* at 54569.

[223] *Id.* at 54597.

[224] *Id.* at 54594; *see also id.* at 54597.

[225] *See Int'l Harvester,* 104 F.T.C. at 1066.

[226] *Davis* v. *HSBC Bank Nev., N.A.,* 691 F.3d 1152, 1168 (9th Cir. 2012), *quoting Orkin Exterminating Co., Inc.* v. *F.T.C.,* 849 F.2d 1354, 1365–66 (11th Cir. 1988).

[227] FTC Policy Statement, *Int'l Harvester,* 104 F.T.C. 1074.

[228] *Id.* The FTC Policy Statement offers examples of such misbehavior, including withholding critical information, engaging in overt coercion, or exercising undue influence over susceptible classes of purchasers.

[229] 82 FR 54472, 54597–98.

[230] *Id.* at 54637 (emphasis added).

[Mandatory Underwriting Provisions in the Final Rule] to the extent that it would require a lender to forecast how many rollovers or how much re-borrowing might be required in the event that a consumer is not likely to repay the entire balance during the initial loan term.'' [231]

Thus, according to the 2017 Final Rule, many consumers are unable to reasonably avoid injury because they are unable to examine their own circumstances, the loan terms, and the typical loan performance in these markets, and determine from this information both their personal likelihood of timely repayment and the seriousness of the consequences if they fail to repay. The application of reasonable avoidability in the 2017 Final Rule contemplates that consumers cannot reasonably avoid harm even though they have a general knowledge that difficulty repaying (either temporarily or permanently) could occur and could lead them either to reborrow or default and experience adverse credit reporting, collections efforts, and even repossessions, liens, and garnishment of wages. Indeed, under the 2017 Final Rule's interpretation, consumers cannot reasonably avoid injury even if they recognize that they will be unable to repay the loan when initially due and will need to borrow but are uncertain as to precisely how long it will take them to be able to fully pay off the debt. Rather than consider whether consumers have reason to anticipate the impending harm and the means to avoid it, the Bureau interpreted the standard as requiring consumers to understand the *specific* likelihood and severity of potential harm to them.

Upon further consideration, the Bureau now preliminarily believes that using this reasonable avoidability standard was problematic. Whether through disclosure or through underwriting, the logic the Bureau applied in the 2017 Final Rule requires providers of covered short-term and longer-term balloon-payment loans to engage in extremely detailed, specific action with regard to particular consumers to correct for the consumers' individualized understanding—or lack of understanding—about their own finances and likely experiences with such loans.

As discussed in part IV, FTC Act precedent informs the Bureau's understanding of the unfairness standard under section 1031(c)(1)(A) of the Dodd-Frank Act. Accordingly, the Bureau considers FTC precedents when evaluating whether an act or practice causes harm or is likely to cause harm that is reasonably avoidable by consumers pursuant to section 1031(c)(1)(A) of the Dodd-Frank Act. When analyzing unfairness under the FTC Act, the FTC and courts have held that ''an injury is reasonably avoidable if consumers have reason to anticipate the impending harm and the means to avoid it,'' [232] meaning that ''people know the physical steps to take in order to prevent'' injury,[233] but ''also . . . understand the necessity of actually taking those steps.'' [234] Under this approach, whether a consumer can anticipate and avoid injury through consumer choice informs whether that injury is reasonably avoidable.[235] In some cases, consumer injury was not reasonably avoidable because a potential harm was not disclosed and consumers could not anticipate that harm from prior experience.[236] In other cases, firms have engaged in deception or outright coercion to prevent the exercise of free consumer choice.[237] However, the Bureau has not identified relevant precedent suggesting that consumers must understand their own specific individualized likelihood and magnitude of harm to reasonably avoid injury or requiring the disclosure of such information to prevent injury. A disclosure that generally alerts consumers to the likelihood and magnitude of harm generally has been sufficient to avoid a finding that consumers did not appreciate the value of taking steps to avoid that harm.[238]

The Bureau's approach to reasonable avoidability is also consistent with trade regulation rules promulgated by the FTC over several decades to address unfair or deceptive practices that occur on industry-wide bases.[239] To prevent such conduct, the FTC has routinely established disclosure requirements that mandate businesses provide to consumers general information about material terms, conditions, or risks related to products or services.[240] However, no FTC trade regulation rule based on unfairness has required businesses to provide individualized forecasts or disclosures of each customer's or prospective customer's own specific likelihood and magnitude of potential harm.[241]

The Bureau preliminarily believes that it should interpret the reasonable avoidability standard as not necessarily requiring payday borrowers to have a specific understanding of their personal risks such that they can accurately predict how long they will be in debt after taking out a covered short-term or longer-term balloon-payment loan. Indeed, by virtue of the fact that many payday borrowers experience income and debt volatility, the 2017 Final Rule effectively presupposed that payday borrowers *per se* cannot reasonably avoid injury. The Bureau now preliminarily believes that the injury is reasonably avoidable if payday borrowers have an understanding of the likelihood and magnitude of risks of harm associated with payday loans sufficient for them to anticipate those harms and understand the necessity of taking reasonable steps to prevent resulting injury. Specifically, this means consumers need only to understand that a significant portion of payday borrowers experience difficulty repaying and that if such borrowers do not make other arrangements they either end up in extended loan sequences, default, or struggle to pay other bills after repaying their payday loan. The Bureau now preliminarily concludes

[231] *Id.* (emphasis added).

[232] *See Davis,* 691 F.3d at 1168.

[233] *See Int'l Harvester,* 104 F.T.C. at 1066.

[234] *Id.*

[235] *See Orkin,* 849 F.2d at 1365.

[236] *See id.* (''consumer choice was impossible'' when company raised annual fees without a contractual basis for lifetime termite protection services); *Int'l Harvester,* 104 F.T.C. at 1066. (''Farmers may have known that loosening the fuel cap was generally a poor practice, but they did not know from the limited disclosures made, nor could they be expected to know from prior experience, the full consequences that might follow from it.'').

[237] *See F.T.C.* v. *Wyndham Worldwide Corp.,* 799 F.3d 236, at 245–46 (3rd Cir. 2015) (injury from data breaches was not reasonably avoidable because of misleading privacy policy that overstated the company's data security practices); *Holland Furnace Co.* v. *F.T.C.,* 295 F.2d 302 (7th Cir. 1961) (company representatives dismantled furnaces without permission and refused to reassemble them until consumers agreed to buy services or parts).

[238] *See, e.g., Int'l Harvester,* 104 F.T.C. 949, at *46 (noting that the dissemination of the disclosure —''AVOID FIRES. TIGHTEN cap securely, Do not open when engine is RUNNING or HOT''—would have made the injury from fuel geysering reasonably avoidable).

[239] Section 18 of the FTC Act provides that the FTC is authorized to prescribe ''rules which define with specificity acts or practices which are unfair or deceptive acts or practices in or affecting commerce'' within the meaning of section 5 of the FTC Act. 15 U.S.C. 57a. The FTC's trade regulation rules are codified at 16 CFR part 400.

[240] *See, e.g., Use of Prenotification Negative Option Plans Rule,* 16 CFR 425.1(a)(1) (promotional material must clearly and conspicuously disclose material terms); *Funeral Industry Practices Rule,* 16 CFR 453.2(b) (requiring itemized price disclosures of funeral goods and services and other non-consumer specific disclosures); *Credit Practices Rule,* 16 CFR 444.3 (prohibiting certain practices and requiring disclosures about cosigner liability).

[241] For example, the Credit Practices Rule requires that a covered creditor to provide a ''Notice to Cosigner'' disclosure prior to a cosigner becoming obligated on a loan. This notice advises in a concise and general manner consumers who cosign obligations about their potential liability. This notice is not individually-tailored and does not require a covered creditor to disclose information about the severity or likelihood of risks related to cosigner liability. *See* 16 CFR 444.3.

that this approach, consistent with the FTC's longstanding approach on informed consumer decision-making in its interpretation of the unfairness standard, is the best interpretation of section 1031(c)(1)(A) as a legal and policy matter. In the Bureau's preliminary judgment, this approach appropriately emphasizes informed consumer decision-making.[242]

Applying an interpretation consistent with FTC precedent, the Bureau preliminarily believes that, assuming for present purposes that the identified practice causes or is likely to cause substantial injury, consumers can reasonably avoid that injury. As noted above, in the 2017 Final Rule, the Bureau expressly found that payday loan borrowers ''typically understand they are incurring a debt which must be repaid within a prescribed period of time and that, if they are unable to do so, they will either have to make other arrangements or suffer adverse consequences.'' [243] Payday loans are advertised as products designed to assist consumers who are in financial distress, which tends to create general awareness that payday borrowers may not necessarily be in a position to readily obtain cheaper forms of credit. In light of their limited options and financial volatility, payday borrowers may infer that there are risks associated with taking the loans. Indeed, as previously noted, the Bureau expressly acknowledged that the Mann Study on which the Bureau so heavily relied found that most payday borrowers expected some repeated sequences of loans. The Bureau also notes that a significant portion of longer-term borrowers—who were the Bureau's primary concern in the 2017 Final Rule—have previously used covered short-term and longer-term balloon-payment loans and personally experienced extended loan sequences.[244] Consumers who have reborrowed in the past would seem particularly likely to have an understanding that such reborrowing is relatively common even if they cannot predict specifically how long they will need to borrow. Further, a Bureau analysis of a study of State-mandated payday loan disclosures—which inform consumers about repayment and reborrowing rates—found that such disclosures had a limited impact on reducing payday loan use and, in particular, reborrowing.[245] The majority of consumers in the study continued to take out payday loans despite the disclosures. A plausible explanation for the limited effect of disclosures on consumer behavior in this study is that payday loan users were already aware that such loans can result in extended loan sequences.

The Bureau in the 2017 Final Rule did not offer evidence that would support the conclusion that consumers cannot reasonably avoid substantial injury from taking out payday loans when applying a standard that focuses on a more generalized understanding of likelihood and magnitude of harm from taking out such loans. The Bureau also found in the 2017 Final Rule that consumers who would not be offered a payday loan under either § 1041.5 or § 1041.6 would have alternatives to payday loans.[246] Accordingly, the Bureau preliminarily believes that there is not a sufficient evidentiary basis on which to find that consumers cannot reasonably avoid substantial injury caused or likely to be caused by lenders making covered short-term and longer-term balloon-payment loans without assessing borrowers' ability to repay.

The Bureau seeks comments on this issue, including comment on the Bureau's proposed revised interpretation of reasonable avoidability under section 1031(c)(1) of the Dodd-Frank Act. The Bureau requests comment about the types or sources of information with respect to consumer understanding about covered short-term and longer-term balloon-payment loans that would be pertinent to a determination of whether consumers can reasonably avoid the substantial injury caused or likely to be caused by the identified practice.

2. Countervailing Benefits to Consumers and to Competition

After determining in the 2017 Final Rule that the identified practice causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by them, the Bureau went on to determine that such substantial injury is not outweighed by countervailing benefits to consumers or to competition. This is a necessary element of an unfairness determination under section 1031(c)(1)(B) of the Dodd-Frank Act. The Bureau now revisits this latter determination and believes certain countervailing benefits from the identified practice were greater than the Bureau found in the 2017 Final Rule. Even assuming *arguendo* that the identified practice causes or is likely to cause substantial injury to consumers which is not reasonably avoidable, the Bureau now revalues and determines that the countervailing benefits under the unfairness analysis were greater than the Bureau found in the 2017 Final Rule, and now preliminarily believes that the benefits to consumers and competition from the practice outweigh any such injury.

a. Reconsideration of the Dependence of the Unfairness Identification on the Principal Step-Down Exemption

Section 1031(b) of the Dodd-Frank Act authorizes the Bureau to prescribe rules ''identifying as unlawful unfair, deceptive, or abusive acts or practices'' if the Bureau makes the requisite findings with respect to such acts or practices.[247] The Bureau exercised this authority in § 1041.4 to determine that it is unfair and abusive for a lender to make covered loans ''*without reasonably determining that the consumers will have the ability to repay the loans according to their terms.*'' [248] The Bureau also exercised its authority under section 1031(b) of the Dodd-Frank Act to impose ''requirements for the purpose of preventing such acts or practices'' by adopting requirements in § 1041.5 for how lenders should go about making such an ability-to-repay determination.[249]

In the section 1022(b)(2) analysis of the 2017 Final Rule, the Bureau estimated that if lenders ceased to engage in the identified practice and instead followed the mandatory underwriting requirements designed to prevent that practice, only one-third of current borrowers would be able to obtain any loans and, of those who obtained a loan, only one-third would be able to obtain a subsequent loan.[250] The end result, the Bureau estimated, would be to eliminate between 89 and 93 percent of all loans.[251]

[242] As the FTC stated in the FTC Policy Statement: ''[W]e expect the marketplace to be self-correcting, and we rely on consumer choice—the ability of individual consumers to make their own private purchasing decisions without regulatory intervention—to govern the market. We anticipate that consumers will survey the available alternatives, choose those that are most desirable, and avoid those that are inadequate or unsatisfactory.'' FTC Policy Statement, *Int'l Harvester,* 104 F.T.C. at 1074. *See also Orkin,* 849 F.2d at 1365 (''The Commission's focus on a consumer's ability to reasonably avoid injury 'stems from the Commission's general reliance on free and informed consumer choice at the best regulator of the market.'''') (*quoting Am. Fin. Serv. Ass'n* v. *F.T.C.,* 767 F.2d 957, 976 (D.C. Cir. 1985)).

[243] 82 FR 54472, 54615.

[244] *Id. at* 54597.

[245] *Id. at* 54577–78; *see* Tex. Office of Consumer Credit Comm'r, *Credit Access Businesses, http://occc.texas.gov/industry/cab.*

[246] 82 FR 54472, 54840–41.

[247] 12 U.S.C. 5531(b).

[248] 12 CFR 1041.4 (emphasis added).

[249] 12 U.S.C. 5531(b); 12 CFR 1041.5.

[250] 82 FR 54472, 54833.

[251] *Id.* at 54826 (storefront payday), 54834 (vehicle title).

In conducting its countervailing benefits analysis, however, the Bureau in the 2017 Final Rule did not address the benefits to consumers or competition from lenders making covered short-term and longer-term balloon-payment loans without an ability-to-repay determination. Rather than focusing on the effects of the identified practice itself, the Bureau interjected into its analysis the effect of Rule provisions that were intended to mitigate the general effects of the requirement that lenders make an ability-to-repay determination. Specifically, the Bureau included in its countervailing benefits analysis the principal step-down exemption in § 1041.6. The principal step-down exemption permits a certain number of covered short-term and longer-term balloon-payment loans to be made without assessing the consumer's ability to repay so long as the loans meet a series of other conditions, including a requirement that the loan amount is amortized over successive loans by stepping down the principal over such loans. None of these conditions involve any ability-to-repay determination by the lender. Rather, the conditions generally focus on whether the loan amount is amortized (stepped down) over successive loans. The Bureau anticipated that the principal step-down exemption would actually be the predominant approach that payday lenders would use to comply with the Mandatory Underwriting Provisions, because of the substantial burdens the Mandatory Underwriting Provisions would impose on lenders.

The principal step-down exemption was not part of the identified practice. Rather, the exemption was added pursuant to the Bureau's authority to create exemptions which the Bureau deems ''necessary or appropriate to carry out the purposes and objectives of'' Title X of the Dodd-Frank Act.[252]

The Bureau in the 2017 Final Rule did not consider in the countervailing benefits analysis the full benefits to consumers and competition from the identified practice of lenders making covered loans without making an ability-to-repay determination. In the words of the Bureau, the combination of the mandatory underwriting requirements plus the principal step-down exemption meant that only a ''relatively limited number of consumers'' would face a ''restriction on covered loans'' which ''reduces the weight on this [the countervailing benefits] side of the scale.'' [253] This weight would have been much greater had the Bureau properly considered the full benefits from lenders engaging in the identified practice.

The Bureau preliminarily believes that the approach taken by the Bureau in the 2017 Final Rule puts the proverbial cart before the horse. The principal step-down exemption is a carve-out from requirements adopted to prevent an identified unfair and abusive practice. Thus, a predicate for the exemption, as pertinent here, is the existence of an act or practice which is unfair—which is to say, the existence of an act or practice for which the substantial injury outweighs countervailing benefits to consumers or to competition. It follows that an exemption predicated on the existence of an unfair practice should not be taken into account in determining whether a particular act or practice is unfair, *i.e.,* in assessing the countervailing benefits of the act or practice at issue.

As the FTC Policy Statement explains, ''[m]ost business practices entail a mixture of economic and other costs and benefits for purchasers. . . . The [FTC] is aware of these tradeoffs and will not find that a practice unfairly injures consumers unless it is injurious in its net effects.'' [254] In the 2017 Final Rule, the Bureau declared a practice unfair based on its aggregate costs to consumers, but in doing so it relied analytically on a large-scale exemption to avoid fully considering the practice's benefits, thereby inflating the costs of the practice relative to its benefits. Because the Bureau did not confront the total tradeoffs between the benefits and costs of the identified practice, the Bureau now preliminarily believes that the 2017 Final Rule undervalued countervailing benefits. Doing so may brand business practices as unfair when they are beneficial on net to consumers or competition.

Accordingly, the Bureau preliminarily believes that when evaluating the countervailing benefits of the identified practice, the Bureau should have accounted for the complete benefits from that practice. The complete benefits to consumers and competition should reflect the benefits to consumers that would be lost if the identified practice were prohibited. Otherwise, it is not possible to accurately assess (as the Bureau now preliminarily interprets the unfairness test as requiring) whether the benefits of making such loans without determining ability to repay outweigh the injury from doing so.

b. Effect of Undervaluing Countervailing Benefits

The Bureau also preliminarily believes that after fully accounting for the countervailing benefits—including benefits it disregarded in the 2017 Final Rule because of its reliance on the principal step-down exemption and also other benefits that it acknowledged but, in the Bureau's current view, undervalued—any aggregate injury to consumers caused by the identified practice is outweighed by the aggregate countervailing benefits to consumers and competition of that practice.

As the Bureau noted in the 2017 Final Rule, the relevant question under section 1031(c)(1)(B) of the Dodd-Frank Act is whether the countervailing benefits ''outweigh the substantial injury that consumers are unable reasonably to avoid and that stems from the identified practice.'' The Bureau approaches this determination by first weighing the relevant injury in the aggregate (taking the findings of the 2017 Rule as a given because it need not reconsider them here), then weighing countervailing benefits in the aggregate, and then assessing which of the two predominates.[255]

i. Countervailing Benefits to Consumers

In the 2017 Final Rule, the Bureau analyzed the countervailing benefits separately for three segments of consumers, defined by their *ex post* behavior: Repayers (those who repay a covered short-term or longer-term balloon-payment loan when due without the need to reborrow within 30 days); reborrowers (those who eventually repay the loan but after one or more instances of reborrowing); and defaulters (those who default either on an initial loan or on a subsequent loan that is part of a sequence of loans).[256] The Bureau follows the same framework here. At the same time, the Bureau requests comment on whether these are the appropriate categories within which to analyze the existence of countervailing benefits.

Repayers. In between 22 percent and 30 percent of payday loan sequences [257]

[252] 12 U.S.C. 5512(b)(3).

[253] 82 FR 54472, 54609, 54603.

[254] *See* FTC Policy Statement, *Int'l Harvester,* 104 F.T.C. at 1073.

[255] 82 FR 54472, 54602. ''Injury is weighed in the aggregate, rather than simply on a consumer-by-consumer basis,'' and conversely ''the countervailing benefits to consumers are also measured in the aggregate, and the Bureau includes the benefits even to those consumers who, on net, were injured.'' *Id.* at 54591.

[256] *Id.* at 54599–600.

[257] *See* Supplemental Findings at 120. The higher number uses a 14-day definition of loan sequence and thus includes consumers who repay their first loan and do not borrow within the ensuing two weeks. The lower number uses a 30-day definition and thus counts only those who do not reborrow within 30 days after repayment.

and a smaller slice of vehicle title sequences,[258] borrowers obtain a single loan, repay it in full when first due, and do not reborrow again for a period of 14 to 30 days thereafter. In conducting the countervailing benefits analysis in the 2017 Final Rule with respect to repayers, the Bureau did not suggest that the identified practice was without benefit to these repayers. Rather, the Bureau's countervailing benefits analysis in the 2017 Final Rule effectively acknowledged the identified practice had benefits for some repayers because the Rule recognized that it was important to avoid ''false negatives,'' *i.e.,* consumers who in fact have the ability to repay but who could not establish it *ex ante.*[259] However, the Bureau determined that these countervailing benefits were ''minimal,'' in part because the Bureau anticipated that lenders would make substantially all the loans permitted by the Mandatory Underwriting Provisions of the 2017 Final Rule and in part because the Bureau believed that the principal step-down exemption would mitigate any false negative concerns.[260]

The Bureau now believes that in the 2017 Final Rule it understated the risk that, under the mandatory underwriting requirements, some consumers who would be repayers and would benefit from receiving a loan would nonetheless be denied a loan. This risk arises in part from the difficulty some borrowers may have in proving their ability to repay and in part from that the fact that some lenders may choose to ''over-comply'' in order to reduce their legal exposure. Although the 2017 Final Rule minimized the possibility that lenders would take a ''conservative approach . . . due to concerns about compliance risk,'' [261] the Bureau now preliminarily believes that somewhat greater weight should be placed on this risk. The Bureau's experience in other markets indicates that some lenders generally seek to take steps to avoid pressing the limits of the law.

Moreover, from the perspective of the repayers, there may also be significant effects of requiring lenders to make ability-to-repay determinations that might be termed ''system'' effects. As previously noted, the 2017 Final Rule's assessment of benefits and costs estimated that, if covered short-term or longer-term balloon-payment loans could be made only to those consumers with an ability to repay in a single installment without reborrowing, lenders would not make upwards of 90 percent of all loans and of course not receive revenue from loans that are not made. At a minimum, that would lead to a vast constriction of supply. The Bureau believes that a 90 percent reduction in revenue would produce at least a corresponding reduction in supply [262] and could have even a more profound effect if the remaining revenue were insufficient to sustain the business model. In other words, the Bureau preliminarily believes that one of the countervailing benefits of permitting lenders to engage in the identified practice is that it makes it possible to offer loans on a wide-scale basis to the repayers. Prohibiting such lending will necessarily decrease the ability of the repayers to obtain covered short-term and longer-term balloon-payment loans.

Reborrowers. As the Bureau noted in the 2017 Final Rule, over 55 percent of both payday and vehicle title sequences result in the consumer reborrowing one or more times before finally repaying and not borrowing again for 30 days.[263] The Bureau acknowledged that some of these borrowers who are unable to repay in a single installment (*i.e.,* without reborrowing) may nonetheless benefit from having access to covered short-term and longer-term balloon-payment loans because the borrowers may be income-smoothing across a longer time span. These borrowers also may benefit because they may face eviction, overdue utility bills, or other types of expenses, with paying such expenses sometimes creating benefits for consumers that outweigh the costs associated with the payday loan sequence. But the Bureau stated that the principal step-down exemption—which it said is ''worth emphasizing'' in this context—would ''reduc[e] the magnitude'' of the countervailing benefits flowing from the identified practice.[264] After taking into account this reduction, the Bureau concluded, however, that the remaining countervailing benefits were outweighed by the injury to those reborrowers who find themselves ''unexpectedly trapped in extended loan sequences.'' [265]

On its own terms, this reasoning has no applicability with respect to vehicle title reborrowers for whom the principal step-down exemption would not be available and who thus would lose the ability to income smooth over more than one vehicle title loan or deal with the expenses referenced above. This reasoning similarly does not apply to payday loan reborrowers who cannot qualify for the principal step-down exemption, for example, borrowers who find that they have a new need for funds but have already exhausted the various borrowing limits imposed by the exemption.[266] Moreover, as explained above, the Bureau believes that this reliance on the principal step-down exemption was misplaced.

The Bureau preliminarily believes that the consequences of this reliance on the exemption are profound. Under an ability-to-repay regime, assuming the systemic effects did not eliminate the industry completely, most of the 58 percent of payday borrowers or 55 percent of vehicle title borrowers would lose access to covered short-term and longer-term balloon-payment loans on the grounds that reborrowers lack the ability to repay the loans according to their terms. To the extent some consumers passed an ability-to-repay assessment and needed to reborrow, most would be precluded from taking out a second loan. In other words, the practice of making covered short-term or longer-term balloon-payment loans to consumers who cannot satisfy the mandatory underwriting requirement is the linchpin of enabling the reborrowers to access these type of loans.

The Bureau acknowledges that among reborrowers there is a sizable segment of consumers who end up in extended loan sequences before repaying and thus incur significant costs. But even for these borrowers, there is some countervailing benefit in being able to obtain access to credit, typically through the initial loan, that is used to meet what the Bureau acknowledged in the 2017 Final Rule to be an ''urgent need for funds'' [267]—for example, to pay rent and stave off an eviction or a utility bill and avoid a shutdown, or to pay for needed medical care or food for their family.[268] Moreover, over 35 percent of the reborrowers required only between one and three additional loans before being able to repay and stop borrowing

[258] *See* Bureau of Consumer. Fin. Prot., *Single-Payment Vehicle Title Lending,* at 11 (May 2016), *https://files.consumerfinance.gov/f/documents/201605_cfpb_single-payment-vehicle-title-lending.pdf* (11 to 13 percent).

[259] *See* 82 FR 54472, 54603–04.

[260] *Id.*

[261] *Id.* at 54603.

[262] *See id.* at 54817, 54842 (estimating that the 2017 Final Rule as a whole, including the principal step-down exemption, would reduce loan volume by between 62 and 68 percent and would result in a corresponding reduction in the number of retail outlets).

[263] *Id.* at 54605.

[264] *Id.* at 54606.

[265] *Id.* at 54605.

[266] 12 CFR 1041.6.

[267] 82 FR 54472, 54620.

[268] As discussed in the Rule, *id.* at 54538, surveys which ask borrowers about the reasons for borrowing may elicit answers regarding the immediate use to which the loan proceeds are put or about a past expense shock that caused the need to borrow, making interpretation of the survey results difficult. But what seems beyond dispute is that these borrowers have a pressing need for additional money.

for 30 days and an additional almost 20 percent of the reborrowers required between four and six additional loans before being able to repay.[269] These shorter-term reborrowers would forgo any benefits associated with these additional loans if lending was limited to those who can demonstrate an ability to repay in a single installment.

In sum, the Bureau preliminarily believes that there are substantial countervailing benefits for reborrowers that flow from the identified practice that the Bureau now preliminarily believes should not have been discounted in the 2017 Final Rule by relying on the principal step-down exemption.

Defaulters. The third group of borrowers discussed in the 2017 Final Rule were those whose sequences end in default. As to this group, representing 20 percent of payday borrowers[270] and 32 percent of vehicle title borrowers,[271] the Bureau acknowledged that ''these borrowers typically would not be able to obtain loans under the terms of the final rule'' (and thus the Bureau did not rely on the principal step-down exemption in assessing the effects on these consumers).[272] The Bureau went on to note that ''losing access to non-underwritten credit may have consequences for some consumers, including the ability to pay for other needs or obligations'' and the Bureau stated that this is ''not an insignificant countervailing benefit.''[273] But the Bureau went on to state that these borrowers ''are merely substituting a payday lender or title lender for a preexisting creditor'' and obtaining ''a temporary reprieve.''[274]

Of course, it is not necessarily true that all defaulters use their loan proceeds to pay off other outstanding loans; at least some use the money to purchase needed goods or services, such as medical care or food. Moreover, the Bureau is now concerned that in the 2017 Final Rule it may have minimized the value to consumers of substituting a payday lender for other creditors, such as a creditor with the power to initiate an eviction or shut off utility services or refuse medical care. The Bureau is also concerned that the 2017 Final Rule may have minimized the value of a ''temporary reprieve'' which may enable defaulters to stave off more dire consequences than the consequences of defaulting on a payday loan.

Conclusion. In sum, the Bureau now preliminarily believes that the 2017 Final Rule's approach to its countervailing benefits analysis caused it to underestimate the countervailing benefits in terms of access to credit that flows from the identified practice. It is not just the benefit of access to credit for those payday loan consumers who would lose access under the principal step-down exemption that should be weighed; rather the systemic effects of ending the identified practice and eliminating over 90 percent of all payday and vehicle title loans would adversely affect the interests of all borrowers—including even those with the ability to repay. Furthermore, the Bureau now preliminarily believes that it underestimated the benefits of access to credit for a large segment of reborrowers and even for some defaulters—including the benefits of a temporary reprieve, of substituting a payday or vehicle title lender for some other creditor and, for the reborrowers, the benefit of smoothing income over a period longer than a single two-week or 30-day loan. The Bureau preliminarily believes that after giving full and appropriate weight to the interests of all affected consumers, the countervailing benefits to consumers that flow from the practice of making covered short-term and longer-term balloon-payment loans without making an ability-to-repay determination outweigh the substantial injury that the Bureau considered in the 2017 Final Rule to not be reasonably avoidable by consumers. The Bureau invites comment on these preliminary conclusions.

ii. Countervailing Benefits to Competition

As with its discussion of the countervailing benefits to consumers, the 2017 Final Rule analyzed the countervailing benefits to competition through the lens of the principal step-down exemption. Specifically, the 2017 Final Rule acknowledged that ''a certain amount of market consolidation may impact . . . competition'' but asserted that this effect would be modest and would not reduce meaningful access to credit because of the principal step-down exemption.[275] For the reasons previously discussed, the Bureau now preliminarily believes that the Bureau should not have factored into its analysis this exemption but rather should have analyzed the effect on competition from the identified practice under which lenders would be able to make upwards of 90 percent of the loans they would not be able to make if the identified practice were determined to be unfair. The Bureau preliminarily believes that the loss of revenue from these loans and in the corresponding reduction in supply would have a dramatic effect on competition, especially if lenders cannot stay in business in the face of such decreases in revenue.

The Bureau recognizes that because of State-law regulation of interest rates, the effect of reduced competition may not manifest itself in higher prices. However, payday and vehicle title lenders compete on non-price dimensions and a rule which caused at least a 90 percent reduction in revenue and supply would likely materially impact such competition.

The Bureau also notes that, as the 2017 Final Rule recognized, a number of innovative products are seeking to compete with traditional short-term lenders by assisting consumers in finding ways to draw on the accrued cash value of wages they have earned but not yet paid, and that some of these products take the form of extensions of credit.[276] Other innovators are providing emergency assistance at no cost to consumers through a tip model.[277] The 2017 Final Rule included exclusions to accommodate these emerging products, thereby recognizing that providers offering these products were doing so without assessing the consumers' ability to repay without reborrowing. The Bureau therefore preliminarily believes that a prohibition of making short-term or balloon-payment loans without assessing consumers' ability to repay would constrain innovation in this market.

The Bureau preliminarily believes that these countervailing benefits to competition provide an additional reason to conclude that the countervailing benefits to consumers and to competition outweigh the substantial injury that the Bureau considered in the 2017 Final Rule to not be reasonably avoidable by consumers. The Bureau invites comment on these preliminary conclusions.

3. Lack of Understanding of Material Risks, Costs, or Conditions

As discussed in part V.A.2 above, under section 1031(d)(2)(A) of the Dodd-Frank Act it is an abusive practice to take unreasonable advantage of a lack of understanding on the part of the consumer of the material risks, costs, or

[269] *See* Supplemental Findings at 122 (fig. 36).

[270] *See id.* at 120 (tbl. 23).

[271] *See* Bureau of Consumer. Fin. Prot., *Single-Payment Vehicle Title Lending,* at 11 (May 2016), *https://files.consumerfinance.gov/f/documents/201605_cfpb_single-payment-vehicle-title-lending.pdf.*

[272] 82 FR 54472, 54604.

[273] *Id.*

[274] *Id.* at 54604, 54590.

[275] 82 FR 54472, 54611–12.

[276] 12 CFR 1041.3(d)(7).

[277] 12 CFR 1041.3(d)(8).

conditions of a consumer financial product or service. In the Mandatory Underwriting Provisions of the 2017 Final Rule, the Bureau took a similar approach to interpreting this provision as it took with respect to the reasonable avoidability element of unfairness. The Bureau interpreted the statute to mean that consumers lack understanding if they fail to understand either their personal ''likelihood of being exposed to the risks'' of the product or service in question or ''the severity of the kinds of costs and harms that may occur.'' [278]

Unlike the elements of unfairness specified in section 1031(c) of the Dodd-Frank Act, the elements of abusiveness do not have a long history or governing precedents. Rather, the Dodd-Frank Act marked the first time that Congress defined ''abusive acts or practices'' as generally unlawful in the consumer financial services sphere. The Bureau preliminarily believes that this element of the abusiveness test for this proposal should be treated as similar to reasonable avoidability. That is, the Bureau now preliminarily believes that the approach taken in the 2017 Final Rule was problematic, as discussed below, and now applies an approach under which ''lack of understanding'' would not require payday borrowers to have a specific understanding of their personal risks such that they can accurately predict how long they will be in debt after taking out a covered short-term or longer-term balloon-payment loan. Rather, the Bureau preliminarily believes that consumers have a sufficient understanding under section 1031(d)(2)(A) of the Dodd-Frank Act if they appreciate the general risks of harm associated with the products sufficient for them to consider taking reasonable steps to avoid that harm. The Bureau in the 2017 Final Rule did not offer evidence that consumers lack such an understanding with respect to the material risks, costs or conditions on covered short-term and longer-term balloon-payment loans. In the absence of such evidence, the Bureau preliminarily believes it should not have concluded in the 2017 Final Rule that the identified practice was an abusive act or practice pursuant to section 1031(d)(2)(A) of the Dodd-Frank Act.

For these reasons, which are set forth in more detail in part V.C.1 above regarding reasonable avoidability, the Bureau has preliminarily determined that its interpretation of ''lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service'' in the 2017 Final Rule was too broad. The Bureau seeks comment on this issue, including comment on how the Bureau should interpret section 1031(d)(2)(A) of the Dodd-Frank Act.

4. Taking Unreasonable Advantage

The Bureau is also reconsidering how the 2017 Final Rule applied section 1031(d)(2) of the Dodd-Frank Act, which proscribes abusive conduct that takes ''unreasonable advantage'' of certain consumer vulnerabilities enumerated in the statute. As described above, the Bureau focused on two such vulnerabilities in connection with evaluating lenders making covered loans without making an ability-to-repay determination—both lack of consumer understanding and inability to protect their own interests. The Bureau stated that there comes a point at which a financial institution's conduct in leveraging its superior information or bargaining power relative to consumers becomes unreasonable advantage-taking, and that the Dodd-Frank Act delegates to the Bureau the responsibility for determining when advantage-taking has become unreasonable.[279] The Bureau's unreasonable advantage analysis applied a multi-factor analysis, concluding that:

> At a minimum lenders take unreasonable advantage of borrowers when they [1] develop lending practices that are atypical in the broader consumer financial marketplace, [2] take advantage of particular consumer vulnerabilities, [3] rely on a business model that is directly inconsistent with the manner in which the product is marketed to consumers, and [4] eliminate or sharply limit feasible conditions on the offering of the product (such as underwriting and amortization, for example) that would reduce or mitigate harm for a substantial population of consumers.[280]

The Bureau has decided to reassess this application of section 1031(d)(2) of the Dodd-Frank Act. This inquiry is inherently a question of judgment in light of the factual, legal, and policy factors that can inform what is reasonable or unreasonable in particular circumstances. Upon further consideration, the Bureau preliminarily concludes that the factors cited in the 2017 Final Rule do not constitute unreasonable advantage-taking.

First, insofar as the Bureau in the 2017 Final Rule focused on the atypicality of granting credit without assessing ability to repay, the Bureau now questions whether this practice is an appropriate indicator of unreasonable advantage-taking. Although the Bureau pointed to the fact that the practice of extending credit without assessing ability to repay is an unusual one, it is actually common with regard to credit products for consumers who lack traditional indicia of creditworthiness—for example, credit products for consumers with little or no credit history, loans for students, or reverse mortgages for the elderly. Further, the Bureau believes that innovators and new entrants into product markets often engage in practices that deviate from established industry norms and conventions. Many such practices are by definition atypical. Thus, to presume that atypicality is inherently suggestive of unreasonable advantage-taking would risk stifling innovation. These all suggest that even if the lack of underwriting were atypical, it still should not be viewed as inherently suggestive of unreasonable advantage-taking, given differences between particular consumer financial markets and the needs of their respective consumers.

Second, on taking advantage of particular consumer vulnerabilities, as discussed above, the Bureau preliminarily believes that limitations in the Rule's evidentiary record, including issues related to the Mann Study and the Pew Study, call into question the Bureau's findings regarding the degree of vulnerabilities of covered short-term and longer-term balloon-payment loan users. But even if the Bureau's findings in the 2017 Final Rule regarding user vulnerabilities are valid, the Bureau now preliminarily does not believe that they would independently support an unreasonable advantage-taking determination. The ''takes unreasonable advantage of'' element in section 1031(d)(2) of the Dodd-Frank Act requires that an act or practice take advantage of a vulnerability specified by, as relevant here, section 1031(d)(2)(A) (lack of understanding) or section 1031(d)(2)(B) (inability to protect). The Bureau now believes that the 2017 Final Rule did not adequately explain how the practice of not reasonably assessing a consumer's ability to repay a loan according to its terms leveraged particular consumer vulnerabilities. On the contrary, covered short-term and longer-term balloon-payment loans are made available to the general public on standard terms, and the 2017 Final Rule did not conclude, for example, that lenders had the ability to identify consumers with particular vulnerabilities prior to lending and use that information to treat some consumers differently than others, for example, by charging them different

[278] 82 FR 54472, 54617.

[279] *Id.* at 54621.

[280] *Id.* at 54623 (bracketed numbers added).

prices or including different terms in contracts for them.[281]

Third, the Bureau is concerned that the Rule conflated the significance of a consumer's understanding of a company's business model with the consumer's understanding of that company's products or services. The Bureau stated that lenders' ''business model—unbeknownst to borrowers—depends on repeated re-borrowing.'' [282] However, whether or not consumers understand the lender's revenue structure does not in itself determine whether they lack understanding about the features of the loan that they choose to take out. But the Bureau asserted that the two are connected, because lenders' business models are ''directly inconsistent with the manner in which the product is marketed to consumers.'' [283] The Bureau nevertheless did not have evidence, for example, that consumers erroneously believe or are misinformed by lenders that loans are offered only to those consumers who have the ability to repay without reborrowing. The Bureau doubts that an inconsistency between a company's business model and its marketing of a product or service is a pertinent factor in assessing whether the method of deciding to extend credit constitutes unreasonable advantage-taking. The Bureau noted that ''covered short-term loans are marketed as being intended for short-term or emergency use,'' [284] but that appears to be a statement about how most consumers use these loans, not a statement about the lenders' revenue structures.[285]

Fourth, on eliminating or sharply limiting feasible conditions that would reduce harm for a substantial portion of consumers, the Bureau questions whether a lender's decision not to offer such conditions constitutes unreasonable advantage-taking in this context. As discussed above with respect to atypicality, the Bureau does not believe that a lender's forgoing underwriting in this context necessarily indicates unreasonable advantage-taking.[286] Further, a lender's decision not to offer a short-term, non-amortizing product may be reasonable given that some States constrain the offering of longer-term products and, even if State law were not a constraint, longer-term, amortizing products would require lenders to assume credit risk over a longer period of time. The Bureau therefore now preliminarily does not believe this factor is of significant probative value concerning whether the identified practices takes unreasonable advantage of consumer vulnerabilities.

For these reasons, the Bureau preliminarily believes that it does not have a sufficient basis to find that lenders take unreasonable advantage of consumers under section 1031(d)(2) of the Dodd-Frank Act by making covered short-term loans or covered longer-term balloon-payment loans without reasonably assessing the consumer's ability to repay the loan according to its terms.

The Bureau seeks comment on this issue, including how the Bureau should interpret ''taking unreasonable advantage'' and the appropriate test for distinguishing between reasonable and unreasonable conduct under section 1031(d)(2) of the Dodd-Frank Act. The Bureau also seeks comment about the extent to which firms make loans for other consumer financial products without engaging in traditional underwriting, such as what a bank would do to underwrite an automobile loan or consumer finance lender would do for a small business loan.

5. Conclusion

Based on its analysis in parts V.C.1 through V.C.4 above, the Bureau preliminarily believes that the findings of an unfair and abusive practice as identified in § 1041.4 rested on applications of sections 1031(c) and (d) of the Dodd-Frank Act that the Bureau should no longer use. Specifically, the Bureau preliminarily concludes that the Bureau should no longer rely upon the 2017 Final Rule's: (1) Application of the reasonable avoidability element of unfairness under section 1031(c)(1)(A) of the Dodd-Frank Act by finding that consumers could not reasonably avoid injury; (2) application of the countervailing benefits element under section 1031(c)(1)(B) of the Dodd-Frank Act and valuation of certain countervailing benefits under that section; (3) application of the lack of consumer understanding prong of abusiveness under section 1031(d)(2)(A) of the Dodd-Frank Act; and (4) application of the taking unreasonable advantage element of abusiveness under section 1031(d)(2) of the Dodd-Frank Act.

Based on these preliminary findings, the Bureau now proposes to rescind § 1041.4, which identifies the failure to conduct an ability-to-repay assessment in connection with making a covered short-term or longer-term balloon-payment loan as an unfair and abusive practice. The identification of an unfair and abusive practice as set out in § 1041.4 was predicated on certain factual findings established in the 2017 Final Rule as well as a particular application of section 1031(c) and (d) of the Dodd-Frank Act adopted in the 2017 Final Rule. The Bureau's preliminary conclusions here mean that neither factual nor legal grounds sustain the identification of an unfair and abusive practice as set out in § 1041.4.

The Bureau requests comment on these legal conclusions, the application and understanding of these specific provisions of section 1031(c) and (d) of the Dodd-Frank Act, and the application of the factual findings in part V.B above to these sections that would be pertinent to the Bureau's preliminary determination that there are no grounds to identify an unfair or abusive practice in § 1041.4, which identifies the failure to conduct an ability-to-repay analysis in connection with a covered short-term or longer-term balloon-payment loan as an unfair and abusive practice.

D. Consideration of Alternatives

The Bureau generally considers alternatives in its rulemakings. Here, the context for the consideration of alternatives is that the Bureau is proposing to rescind the Mandatory Underwriting Provisions of the 2017 Final Rule, which were based on the Bureau's discretionary authority, not a

[281] As previously noted, due to similarities between the unfairness provisions in the Dodd-Frank Act and the FTC Act, FTC Act precedent informs the Bureau's understanding of unfairness under the Dodd-Frank Act. Although Dodd-Frank Act abusiveness authority is distinct, FTC Act precedent provides some factual examples that may help illustrate leveraging particular vulnerabilities of consumers. *See, e.g.,* FTC Policy Statement, *Int'l Harvester,* 104 F.T.C. at 1074 (unfair practices may include exercising ''undue influence over highly susceptible classes of purchasers, as by promoting fraudulent 'cures' to seriously ill cancer patients''); *Ideal Toy,* 64 F.T.C. 297, 310 (1964) (''False, misleading and deceptive advertising claims beamed at children tend to exploit unfairly a consumer group unqualified by age or experience to anticipate or appreciate the possibility that representations may be exaggerated or untrue.'').

[282] 82 FR 54472, 54621.

[283] *Id.* at 54623.

[284] *Id.* at 54616.

[285] Moreover, to the extent that certain lenders are using particular language to mislead consumers regarding either the features of loans or the lenders' own revenue structures, it is not clear that this is related to a failure to make an ability-to-repay determination. Rather, that would appear to be a fact-specific problem that is already unlawful under the Dodd-Frank Act's prohibition on deceptive acts or practices. *See* 12 U.S.C. 5531(a).

[286] Further, the Bureau notes that this factor, which suggests that a lender takes unreasonable advantage by not assessing ability to repay because, *inter alia,* the lender does not underwrite, relies to a significant extent on circular logic. By presuming the unreasonable advantage-taking determination in this manner, the Bureau in the 2017 Final Rule neglected to offer a meaningful rationale for the weight that it placed on the failure to underwrite in the fourth factor of the analysis, and the Bureau preliminarily believes that it should not be given this weight.

specific statutory directive.[287] The Bureau has preliminarily concluded as a matter of policy, as outlined in part V.B above, that a more robust and reliable evidentiary record is needed to support a rule that would have such dramatic impacts on the viability of payday lenders, competition among payday lenders, and the availability of payday loans to consumers who want one, and that the findings of an unfair or abusive practice as set out in § 1041.4 rested on applications of the relevant standards that the Bureau should no longer use, as detailed in part V.C.

In light of this posture, the Bureau does not believe that the alternative interventions to the Mandatory Underwriting Provisions considered in the 2017 Final Rule are viable alternatives to the Bureau's proposed rescission of the Mandatory Underwriting Provisions. For example, one alternative analyzed in the 2017 Final Rule was a payment-to-income test, offered in lieu of the specific underwriting criteria established by the Mandatory Underwriting Provisions. In this context, the payment-to-income test, limits on the number of loans in a sequence, and other alternatives that would rely on authority under section 1031 of the Dodd-Frank Act are not viable alternatives to rescission, because the Bureau is proposing to rescind the underlying findings concerning the existence of an unfair and abusive practice.[288]

The Bureau also does not believe that the expenditure of substantial Bureau resources on the development of possible alternative theories of unfair or abusive practices and corollary preventative remedies is warranted given the likely complexity of such an endeavor.

Additionally, the Bureau is not choosing to exercise its rulemaking discretion in order to pursue new disclosure requirements pursuant to section 1032 of the Dodd-Frank Act. As explained in the Bureau's preliminary findings set out in parts V.B and V.C above, there are indications that consumers potentially enter into these transactions with a general understanding of the risks entailed, including the risk of reborrowing. It is thus not clear to the Bureau at this time what purpose would be served by requiring disclosures as to the general risks of reborrowing be provided to these consumers. Further, as previously noted, a Bureau analysis of a study of State-mandated payday loan disclosures found that such disclosures had a limited impact on reducing payday loan use and, in particular, reborrowing, which suggests that consumers already have the information they deem relevant. Moreover, developing the evidentiary basis for disclosure requirements would be challenging and the development of disclosures would likely require the dedication of resources that does not seem warranted given the above factors and given the value of those resources if used to protect consumers through other Bureau activities, such as law enforcement. However, the Bureau does intend, in the normal course of its market monitoring activities, to continue to review whether consumers have the information they need to make informed decisions in the selection and use of short-term and balloon-payment loans.

The Bureau requests comment on its consideration of alternatives to the rescission of the Mandatory Underwriting Provisions, including its preliminary conclusion that the alternatives to the Mandatory Underwriting Provisions, as articulated in the 2017 Final Rule, are not viable alternatives to the rescission of the Mandatory Underwriting Provisions in light of the Bureau's factual and legal findings set forth in parts V.B and V.C above.

E. Conclusion

The Bureau believes that each of the concerns raised above are sufficiently serious in their own right to merit reconsideration of the 2017 Final Rule, and even more so when considered in combination. As described above, the Bureau believes that, in light of the 2017 Final Rule's dramatic market impacts, the studies on which it primarily relied in the Rule do not provide a sufficiently robust and reliable basis for finding that consumers cannot reasonably avoid injury or protect their interests, and do not understand the material risks, costs, and conditions of the loans. The Bureau also now preliminarily believes that the 2017 Final Rule used a problematic approach in applying section 1031 of the Dodd-Frank Act in determining what level of individualized understanding would be necessary to make the findings necessary to support a determination that the identified practice was unfair and abusive; in evaluating the countervailing benefits to consumers and to competition of the identified practice; and in evaluating whether the factors set forth in the 2017 Final Rule are the appropriate standard for taking unreasonable advantage of consumers and, if so, whether the Bureau properly applied that standard. The Bureau preliminarily concludes that it is appropriate to propose rescinding the Mandatory Underwriting Provisions of the 2017 Final Rule. After many years of rulemaking, outstanding questions that the Bureau and other stakeholders have on whether the identified practice is unlawful and whether the Bureau intervention (*i.e.,* the Mandatory Underwriting Provisions) is appropriate remain; the Bureau therefore preliminarily concludes that significantly more time, money, and other resources would be needed from the Bureau, industry, consumers, and other stakeholders to engage in the research and analysis required to develop specific evidence that might support determining that the identified practice is unfair and abusive and that imposing an ability-to-repay regulatory scheme is a necessary and appropriate response to that practice.

The Bureau seeks comment on these preliminary determinations that each of the concerns raised above (set out in parts V.B and V.C) are sufficiently serious in their own right to merit rescission of the Mandatory Underwriting Provisions.

Because the 2017 Final Rule's constellation of Mandatory Underwriting Provisions was premised on the existence of § 1041.4, which identified that the failure to conduct an ability-to-repay assessment constitutes an unfair and abusive practice,[289] the Bureau also preliminarily finds that rescinding § 1041.4 would also require rescinding the provisions setting forth the interventions that constitute the remedy for the practice because the Bureau only has legal authority to promulgate the Mandatory Underwriting Provisions where it has specifically identified an unfair or abusive act or practice.[290] The Bureau also seeks comment on rescission of the provisions in the 2017 Final Rule that

[287] 12 U.S.C. 5531(b) (''The Bureau *may* prescribe rules applicable to a covered person or service provider identifying as unlawful unfair, deceptive, or abusive acts or practices.'') (emphasis added).

[288] This includes, for instance, the payment-to-income alternative, the various State law regulatory approaches such as loan caps, and other interventions. *See* 82 FR 54472, 54636–40.

[289] *See* comment 4–1 (noting that lenders that comply with § 1041.6 in making covered short-term loans have not committed unfair and abusive practices under § 1041.4 and are not subject to § 1041.5).

[290] *See* 12 U.S.C. 5531(b) (''The Bureau may prescribe rules applicable to a covered person or service provider identifying as unlawful unfair, deceptive, or abusive acts or practices.''); *see also id.* at 5531(c) (stating that ''[t]he Bureau shall have no authority under this section to declare an act or practice . . . unlawful on the grounds that such act or practice is unfair'' unless the act or practice meets the elements of unfairness); *id.* at 5531(d) (stating that ''[t]he Bureau shall have no authority under this section to declare an act or practice abusive . . . unless the act or practice'' meets one of two tests of abusiveness).

were predicated on the unfair and abusive practice identified in § 1041.4. These include the mandatory underwriting requirements in § 1041.5,[291] a conditional exemption from those underwriting requirements in § 1041.6,[292] and related reporting and recordkeeping requirements in §§ 1041.10 through 1041.12.[293] The technical aspects of the proposal to rescind and additional, more specific questions with regard to the specific amendments to the 2017 Final Rule are discussed in more detail in part VI below.

Finally, the Bureau invites comments on any other issues or factors not specifically identified above that may nonetheless be relevant to its proposal to rescind the Mandatory Underwriting Provisions of the 2017 Final Rule.

VI. Section-by-Section Analysis

As described in greater detail in part V above, the Bureau is proposing to rescind §§ 1041.4 and 1041.5 of the 2017 Final Rule, which respectively identify the failure to reasonably determine whether consumers have the ability to repay certain covered loans as an unfair and abusive practice and establish certain underwriting requirements to prevent that practice. The Bureau is also proposing to rescind certain derivative provisions that are premised on these two core sections, including a conditional exemption for certain loans in § 1041.6, two provisions (§§ 1041.10 and 1041.11) that facilitate lenders' ability to obtain certain information about consumers' past borrowing history from information systems that have registered with the Bureau, and certain recordkeeping requirements in § 1041.12. The Bureau preliminarily concludes that, if §§ 1041.4 and 1041.5 are rescinded, these derivative provisions would no longer serve the purposes for which they were included in the 2017 Final Rule and should be rescinded as well.

This part VI describes the particular modifications the Bureau is proposing in order to effect the rescission of these various Mandatory Underwriting Provisions. Specifically, as discussed in more detail below, the Bureau is proposing to remove in their entirety the regulatory text and associated commentary for subpart B of the Rule (§§ 1041.4 through 1041.6) and certain provisions of subpart D (§§ 1041.10 and 1041.11, and parts of § 1041.12). The Bureau is also proposing modifications to other portions of regulatory text and commentary in the 2017 Final Rule that refer to the Mandatory Underwriting Provisions or the requirements therein.

As this part VI is describing the specific modifications to regulatory text and commentary that the Bureau is proposing, it refers to ''removing'' text rather than ''rescinding'' it, consistent with the language agencies use to instruct the Office of the Federal Register as to changes to be made in the *Code of Federal Regulations*.[294] In order to avoid confusion, the Bureau is not proposing to renumber the sections or paragraphs that it is not removing; rather, the Bureau is proposing that those section and paragraph numbers be marked as ''[Reserved]'' so that the remaining provisions would continue with the same numbering as they have currently.

Due to changes in requirements by the Office of the Federal Register, when amending commentary the Bureau is now required to reprint certain subsections being amended in their entirety rather than providing more targeted amendatory instructions. The sections of commentary included in this document show the language of those sections if the Bureau adopts its changes as proposed. The Bureau is releasing an unofficial, informal redline to assist industry and other stakeholders in reviewing the changes that it is proposing to make to the regulatory text and commentary of the 2017 Final Rule.[295]

The Bureau seeks comment on the changes to the regulatory text and commentary that it is proposing in this part VI, and in particular whether any of the changes would affect implementation of the Payment Provisions. The Bureau also seeks comment on whether any other modifications not identified herein would be necessary to effect rescission of the Mandatory Underwriting Provisions as proposed.

Subpart A—General

Section 1041.1 Authority and Purpose

1(b) Purpose

Section 1041.1 sets forth the Rule's authority and purpose. The Bureau is proposing to remove the last sentence of § 1041.1(b), which currently provides that part 1041 also prescribes processes and criteria for registration of information systems. The Bureau is proposing this change for consistency with the proposed removal of §§ 1041.10 and 1041.11 discussed below.

Section 1041.2 Definitions

2(a) Definitions

2(a)(5) Consummation

Section 1041.2(a)(5) defines the term consummation. Comment (a)(5)–2 describes what types of loan modifications trigger underwriting requirements pursuant to § 1041.5. The Bureau is proposing to remove comment 2(a)(5)–1 for consistency with the proposed removal of § 1041.5 discussed below.

2(a)(14) Loan Sequence or Sequence

Section 1041.2(a)(14) defines the terms loan sequence and sequence to mean a series of consecutive or concurrent covered short-term loans, or covered longer-term balloon loans, or a combination thereof, in which each of the loans (other than the first loan) is made during the period in which the consumer has a covered short-term or longer-term balloon-payment loan outstanding and for 30 days thereafter. These terms are used in §§ 1041.5, 1041.6, and 1041.12(b)(3), and related commentary. The Bureau is proposing to remove and reserve § 1041.2(a)(14) for consistency with the proposed removal of the provisions in which these terms appear, as discussed below.

2(a)(19) Vehicle Security

Section 1041.2(a)(19) defines the term vehicle security to generally mean an interest in a consumer's motor vehicle obtained by the lender or service provider as a condition of the credit. This term is used in §§ 1041.6 and 1041.12(b)(3) and in commentary accompanying §§ 1041.5(a)(8) and 1041.6. The Bureau is proposing to remove and reserve § 1041.2(a)(19) for consistency with the proposed removal

[291] 12 CFR 1041.5 (requiring that providers make a reasonable determination that the consumer would be able to make the payments on the loan and be able to meet the consumer's basic living expenses and other major financial obligations without needing to reborrow over the ensuing 30 days).

[292] 12 CFR 1041.6 (permitting providers, in lieu of following § 1041.5, to make a covered short-term loan without meeting all the specific underwriting criteria set out above, as long as the loan satisfies certain prescribed terms, the lender confirms that the consumer meets specified borrowing history conditions, and the lender provides required disclosures to the consumer).

[293] 12 CFR 1041.10 (requiring providers to furnish certain information); 12 CFR 1041.11 (establishing requirements for registered information systems); 12 CFR 1041.12 (requiring providers to establish and follow a compliance program and retain certain records).

[294] As noted previously, while most of the 2017 Final Rule has a compliance date of August 19, 2019, the Rule became effective on January 16, 2018.

[295] This redline can be found on the Bureau's regulatory implementation page for the Rule at *https://www.consumerfinance.gov/policy-compliance/guidance/payday-lending-rule/*. If any conflicts exist between the redline and the text of the 2017 Final Rule or this NPRM, the documents published in the **Federal Register** are the controlling documents.

of the provisions in which this term appears, as discussed below.

The Bureau requests comment on whether there are any other definitional terms or portions thereof, in addition to the terms loan sequence or sequence and vehicle security, that it should similarly remove for consistency with the proposed rescission of the Mandatory Underwriting Provisions.

Section 1041.3 Scope of Coverage; Exclusions; Exemptions

3(e) Alternative Loan

Section 1041.3(e) provides a conditional exemption for alternative loans from the requirements of part 1041, which are covered loans that satisfy the conditions and requirements set forth in § 1041.3(e). The Bureau is proposing to revise two comments accompanying § 1041.3(e) that reference the Mandatory Underwriting Provisions, as described below.

3(e)(2) Borrowing History Condition

Section 1041.3(e)(2) addresses a consumer's borrowing history on other alternative loans. Comment 3(e)(2)–1 describes the relevant records a lender may use to determine that the consumer's borrowing history on alternative covered loans meets the criteria set forth in § 1041.3(e)(2). The Bureau is proposing to revise the second sentence of this comment to remove language that refers to consumer reports obtained from information systems registered with the Bureau. The Bureau is proposing this change for consistency with the proposed removal of § 1041.11 discussed below.

3(e)(3) Income Documentation Condition

Section 1041.3(e)(2) requires a lender to maintain and comply with policies and procedures for documenting proof of recurring income. Comment 3(e)(3)–1 generally describes the income documentation policies and procedures that a lender must maintain to satisfy the income documentation condition of the conditional exemption. The Bureau is proposing to remove the second sentence of the comment, which distinguishes the income document condition of § 1041.3(e)(3) from the income documentation procedures required by § 1041.5(c)(2). The Bureau is proposing to revise this comment for consistency with the proposed removal of § 1041.5 discussed below.

Subpart B—Underwriting

Subpart B sets forth the rule's underwriting requirements in §§ 1041.4 through 1041.6. The Bureau is proposing to remove and reserve the heading for subpart B; the removal of its contents is discussed below.

Section 1041.4 Identification of Unfair and Abusive Practice

Section 1041.4 provides that it is an unfair and abusive practice for a lender to make covered short-term or longer-term balloon-payment loans without reasonably determining that the consumers will have the ability to repay the loans according to their terms. For the reasons set forth above, the Bureau is proposing to remove and reserve § 1041.4 and to remove the commentary accompanying § 1041.4.

Section 1041.5 Ability-to-Repay Determination Required

Section 1041.5 generally requires a lender to make a reasonable determination that a consumer has the ability to repay a covered short-term or a longer-term balloon-payment loan before making such a loan or increasing the credit available under such a loan. It also sets forth certain minimum requirements for how a lender may reasonably determine that a consumer has the ability to repay such a loan. For the reasons set forth above, the Bureau is proposing to remove and reserve § 1041.5 and to remove the commentary accompanying § 1041.5.

Section 1041.6 Conditional Exemption for Certain Covered Short-Term Loans

Section 1041.6 provides a conditional exemption for covered short-term loans that satisfy requirements set forth in § 1041.6(b) through (e); §§ 1041.4 and 1041.5 do not apply to such conditionally exempt loans. For the reasons set forth above and for consistency with the proposed removal of §§ 1041.4 and 1041.5, the Bureau is proposing to remove and reserve § 1041.6 and to remove the commentary accompanying § 1041.6.

Subpart D—Information Furnishing, Recordkeeping, Anti-Evasion, and Severability

Subpart D contains the rule's requirements regarding information furnishing (§ 1041.10), registered information systems (§ 1041.11), and compliance programs and record retention (§ 1041.12); sets forth a prohibition against evasion (§ 1041.13); and addresses severability (§ 1041.14). The Bureau is proposing to remove the portion of the subpart's heading that refers to information furnishing for consistency with the proposed removal of §§ 1041.10 and 1041.11. Specific revisions to this subpart's contents are discussed below.

Section 1041.10 Information Furnishing Requirements

Among other things §§ 1041.5 and 1041.6, discussed above, require lenders when making covered short-term and longer-term balloon-payment loans to obtain consumer reports from information systems registered with the Bureau pursuant § 1041.11. Section 1041.10, in turn, requires lenders to furnish certain information about each covered short-term and longer-term balloon-payment loan to each registered information system. For the reasons set forth above and for consistency with the other changes proposed herein, the Bureau is proposing to remove and reserve § 1041.10 and to remove the commentary accompanying § 1041.10.

Section 1041.11 Registered Information Systems

Section 1041.11 sets forth processes for information systems to register with the Bureau, describes the conditions that an entity must satisfy in order to become a registered information system, addresses notices of material change, suspension and revocation of a registration, and administrative appeals. For the reasons set forth above and for consistency with the other changes proposed herein, the Bureau is proposing to remove and reserve § 1041.11 and to remove the commentary accompanying § 1041.11.

Section 1041.12 Compliance Program and Record Retention

12(a) Compliance Program

Section 1041.12 provides that a lender making a covered loan must develop and follow written policies and procedures that are reasonably designed to ensure compliance with the requirements of part 1041. Comment 12(a)–1, in part, lists the various sections of the rule that must be addressed in the compliance program. The Bureau is proposing to remove from that comment the references to the ability-to-repay requirements in § 1041.5, the alternative requirements in § 1041.6, and the requirements on furnishing loan information to registered and preliminarily registered information systems in § 1041.10.

Comment 12(a)–2 explains that the written policies and procedures a lender must develop and follow under § 1041.12(a) depend on the types of covered loans that the lender makes, and provides certain examples. The Bureau is proposing to remove this comment as its examples are largely focused on compliance with §§ 1041.5, 1041.6, and 1041.10. The Bureau does not believe that it is useful to retain the

remaining portion of this comment focusing solely on disclosures related to § 1041.9, although of course it remains true pursuant to § 1041.12(a) itself that a lender that makes a covered loan subject to the requirements of § 1041.9 must develop and follow written policies and procedures to provide the required disclosures to consumers.

The Bureau is proposing to make these changes for consistency with the proposed removal of §§ 1041.5, 1041.6, and 1041.10 discussed above.

12(b) Record Retention

Section 1041.12(b) provides that a lender must retain evidence of compliance with part 1041 for 36 months after the date on which a covered loan ceases to be an outstanding loan. Section 1041.12(b)(1) through (4) sets forth particular requirements for retaining specific records, including retention of the loan agreement and documentation obtained in connection with originating a covered short-term or longer-term balloon-payment loan (§ 1041.12(b)(1)); retention of electronic records in tabular format for covered short-term or longer-term balloon-payment loans regarding origination calculations and determinations under § 1041.5 ((§ 1041.12(b)(2)) and as well as type, terms, and performance (§ 1041.12(b)(3)); and retention of records relating to payment practices for covered loans (§ 1041.12(b)(4)). Proposed revisions to the regulatory text of § 1041.12(b)(1) through (3), and related commentary, are discussed in turn further below.

Comment 12(b)–1 addresses record retention requirements generally. The Bureau is proposing to remove the portion of this comment explaining that a lender is required to retain various categories of documentation and information specifically in connection with the underwriting and performance of covered short-term and longer-term balloon-payment loans, while retaining (with minor revisions for clarity) the reference to records concerning payment practices in connection with covered loans. The comment also explains that the items listed in § 1041.12(b) are non-exhaustive as to the records that may need to be retained as evidence of compliance with part 1041. The Bureau is proposing to remove the remainder of this sentence, which specifically refers to loan origination and underwriting, terms and performance, and payment practices (the specific mention of which is no longer necessary if the other references are removed). The Bureau is proposing these changes for consistency with the proposed removal of §§ 1041.4 through 1041.6 discussed above as well as the proposed changes to § 1041.12(b)(1) discussed below.

12(b)(1) Retention of Loan Agreement and Documentation Obtained in Connection With Originating a Covered Short-Term or Covered Longer-Term Balloon-Payment Loan

Section 1041.12(b)(1) requires that, in order to comply with the requirements in § 1041.12(b), a lender must retain or be able to reproduce an image of the loan agreement and certain documentation obtained in connection with the origination of a covered short-term or longer-term balloon-payment loan. The Bureau is proposing to remove the language in the heading and in the introductory text for § 1041.12(b)(1) that refers to the certain documentation obtained in connection with a covered short-term or longer-term balloon-payment loan, as well as the entirety of § 1041.12(b)(1)(i) through (iii) that specifies particular categories of such documentation. As proposed, the remainder of this provision would require a lender to retain or be able to reproduce an image of the loan agreement for each covered loan. Retaining a copy of the loan agreement is necessary for all lenders, pursuant to the requirement in § 1041.12(b) that lenders retain evidence of compliance for covered loans, in order to determine covered loan status for purposes of determining compliance with the Payment Provisions; the Bureau is proposing to explicitly retain this requirement in § 1041.12(b)(1), for all covered loans, to avoid potential confusion. The Bureau is also proposing to remove the commentary accompanying § 1041.12(b)(1). The Bureau is proposing these changes for consistency with the other changes proposed herein.

12(b)(2) Electronic Records in Tabular Format Regarding Origination Calculations and Determinations for a Covered Short-Term or Covered Longer-Term Balloon-Payment Loan Under § 1041.5

Section 1041.12(b)(2) requires lenders to retain records regarding origination calculations and determinations for a covered short-term or longer-term balloon-payment loan, including specific required information listed in § 1041.12(b)(2)(i) through (v). It requires lenders to retain these records in an electronic, tabular format. For consistency with the proposed removal of § 1041.5, the Bureau is proposing to remove and reserve § 1041.12(b)(2) and to remove the commentary accompanying § 1041.12(b)(2).

12(b)(3) Electronic Records in Tabular Format Regarding Type, Terms, and Performance for Covered Short-Term or Covered Longer-Term Balloon-Payment Loans

Section 1041.12(b)(3) requires lenders to retain records regarding the type, terms, and performance of a covered short-term or longer-term balloon-payment loan, including specific required information listed in § 1041.12(b)(3)(i) through (vii). It requires lenders to retain these records in an electronic, tabular format. The Bureau is proposing to remove and reserve § 1041.12(b)(3) and to remove the commentary accompanying § 1041.12(b)(3), for consistency with the proposed removal of §§ 1041.5 and 1041.6 discussed above.

12(b)(5) Electronic Records in Tabular Format Regarding Payment Practices for Covered Loans

Section 1041.12(b)(5) requires lenders to retain records regarding the payment practices for covered loans, including specific required information listed in § 1041.12(b)(5)(i) and (ii). It requires lenders to retain these records in an electronic, tabular format. For consistency with the other changes proposed herein, the Bureau is proposing to revise comment 12(b)(5)–1 by removing most of its content, which focuses on compliance with § 1041.12(b)(2) and (3) in conjunction with § 1041.12(b)(5), and in its place the Bureau is proposing to incorporate the description of how a lender complies with the requirement to retain records in a tabular format, which is currently set forth in comment 12(b)(2)–1. The Bureau is also proposing to revise comment 12(b)(3)–1 to reflect the proposed change to § 1041.12(b)(3) and to incorporate the description of how a lender complies with the requirement to retain records in a tabular format. This description is currently included in comment 12(b)(2)–1. The Bureau is also proposing to remove the cross-reference to § 1041.12(b)(2) in the description of how records must be retained, and to remove the final sentence of the commentary discussing association of records under § 1041.12(b)(5) with unique loan and consumer identifiers in § 1041.12(b)(3) as the Bureau is proposing to remove those recordkeeping requirements from § 1041.12(b)(3).

Appendix A to Part 1041—Model Forms

A–1 Model Form for First § 1041.6 Loan

Section 1041.6(e)(2)(i) requires a lender that makes a first loan in sequence of loans under the conditional

exemption in § 1041.6 to provide a consumer with a notice that includes certain information and statements, using language that is substantially similar to the language set forth in Model Form A–1. For the reasons sets forth above and for consistency with the proposed removal of § 1041.6, the Bureau is proposing to remove and reserve Model Form A–1.

A–2 Model Form for Third § 1041.6 Loan

Section 1041.6(e)(2)(ii) requires a lender that makes a third loan in sequence of loans under the conditional exemption in § 1041.6 to provide a consumer with a notice that includes certain information and statements, using language that is substantially similar to the language set forth in Model Form A–2. For the reasons sets forth above and for consistency with the proposed removal of § 1041.6, the Bureau is proposing to remove and reserve Model Form A–2.

VII. Compliance and Effective Dates

The Bureau is proposing that the final rule take effect 60 days after publication in the **Federal Register**.[296] As discussed above, the current compliance date for the Mandatory Underwriting Provisions of the 2017 Final Rule is August 19, 2019, which the Bureau has separately proposed elsewhere in this issue of the **Federal Register** to delay by 15 months, to November 19, 2020. After considering comments received on that proposal, the Bureau intends to publish a final rule with respect to the compliance date for the Mandatory Underwriting Provisions of the 2017 Final Rule. Likewise, after considering comments received on this proposal, the Bureau expects to publish a final rule with respect to the Mandatory Underwriting Provisions themselves. The Bureau seeks comment on this aspect of the proposal.

VIII. Dodd-Frank Act Section 1022(b)(2) Analysis

A. Overview

In developing this proposal, the Bureau has considered the potential benefits, costs, and impacts as required by section 1022(b)(2)(A) of the Dodd-Frank Act.[297] Specifically, section 1022(b)(2)(A) of the Dodd-Frank Act calls for the Bureau to consider the potential benefits and costs of a regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services, the impact on depository institutions and credit unions with $10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act, and the impact on consumers in rural areas.

In advance of issuing this proposal, the Bureau has consulted with the prudential regulators and the Federal Trade Commission, including consultation regarding consistency with any prudential, market, or systemic objectives administered by such agencies.

1. The Need for Federal Regulatory Action

As explained above, the Bureau now preliminarily believes that, in light of the 2017 Final Rule's dramatic market impacts as detailed in the section 1022(b)(2) analysis accompanying the 2017 Final Rule, its evidence is insufficient to support the findings that are necessary to conclude that the identified practices were unfair and abusive. The Bureau also now preliminarily believes that the finding of an unfair and abusive practice as identified in § 1041.4 of the 2017 Final Rule rested on applications of sections 1031(c) and (d) of the Dodd-Frank Act that the Bureau should no longer use. The Bureau therefore is proposing to rescind the Mandatory Underwriting Provisions of the 2017 Final Rule because it preliminarily believes the facts and the law do not adequately support the conclusion that the identified practice meets the standard for unfairness or abusiveness under section 1031(c) and (d) of the Dodd-Frank Act.[298]

2. Data and Evidence

In the section 1022(b)(2) analysis that accompanied the 2017 Final Rule, the Bureau endeavored to consider comprehensively the economic benefits and costs that were likely to result from that Rule. These benefits and costs included direct pecuniary impacts, as well as non-pecuniary impacts that the available evidence indicated were likely to result from the Rule, if the proposal were to be adopted. The Bureau relied on the then-available evidence to analyze the potential benefits, costs, and impacts of the Rule.

In this section 1022(b)(2) analysis, the Bureau endeavors to consider comprehensively the economic benefits and costs that are likely to result from the proposal to rescind the Mandatory Underwriting Provisions of the 2017 Final Rule, possibly including some indirect effects.[299]

Since the issuance of the 2017 Final Rule, the body of evidence bearing on benefits and costs has only slightly expanded. As such, with the exception of the new studies discussed below, the Bureau has considered the same information as it considered in the section 1022(b)(2) analysis of the 2017 Final Rule, although as discussed in part V.B, the Bureau has altered its conclusion as to the weight to be accorded to the key evidence in finding an unfair and abusive act or practice as well as warranting regulatory intervention.[300] The new research that has become available after the drafting of the 2017 Final Rule have relatively little impact on the Bureau's analysis compared to the evidence cited in the 2017 Final Rule, as the implications of this new evidence for total surplus and consumer welfare are less clear or probative than those of the previously considered evidence.

The Bureau invites submission of additional data and studies that can supplement those relied on in the 2017 Final Rule's analysis which form the predicate for the estimates here as well as comments on the analyses of benefits and costs contained in that Rule and relied on here. Specifically, in some instances the data to perform quantitative analyses of particular issues or effects are not available, or are quite limited, and submissions that would augment the current analysis are especially welcome. Absent these data, portions of the analysis to follow rely, at least in part, on qualitative evidence provided to the Bureau in previous comments, responses to RFIs, and academic papers; general economic principles; and the Bureau's experience and expertise in consumer financial markets. As such, many of the benefits, costs, and impacts in this proposal are presented in general terms or ranges (as

[296] Section 553(d) of the APA generally requires that the effective date of a final rule be at least 30 days after publication of that final rule, except for (1) a substantive rule which grants or recognizes an exemption or relieves a restriction; (2) interpretive rules or statements of policy; or (3) as otherwise provided by the agency for good cause found and published with the rule. 5 U.S.C. 553(d). If finalized, this proposal would not establish any requirements; instead, it would rescind the relevant provisions of the 2017 Final Rule. Accordingly, if finalized this proposal would be a substantive rule which relieves a restriction that is exempt from section 553(d) of the APA.

[297] 12 U.S.C. 5512(b)(2)(A).

[298] The 2017 Final Rule stated that the existence of a market failure supported the need for Federal regulatory action. As the Bureau now believes that there is not a need for the Federal regulatory action described in the 2017 Final Rule, it is not necessary for the Bureau here in the section 1022(b)(2) analysis to identify or address a market failure.

[299] Note that, in considering these ''second-order'' impacts, the Bureau focuses on those effects where research has established a plausible, causal link between the intervention and the benefits or costs.

[300] The same evidence may be evaluated differently for purposes of legal and economic analysis.

they were in the section 1022(b)(2) analysis of the 2017 Final Rule), rather than as point estimates.

The Bureau also requests comment on potential alternatives.

3. Major Provisions and Coverage of the Proposed Rule

In this analysis, the Bureau focuses on the benefits, costs, and impacts of the three major elements of the proposal: (1) The revocation of the 2017 Final Rule's requirement to reasonably determine borrowers' ability to repay covered short-term and longer-term balloon-payment loans according to their terms (along with the conditional exemption allowing for a principal step-down approach to issuing a limited number of short-term loans); (2) the revocation of the recordkeeping requirements associated with (1); and (3) the revocation of the 2017 Final Rule's requirements concerning furnishing provisions and their associated requirements for registered information systems.

In the 2017 Final Rule, the Bureau delineated two major classes of short-term lenders it expected to be affected by the Mandatory Underwriting Provisions: Payday/unsecured short-term lenders, both storefront and online, and short-term vehicle title lenders.[301] The Bureau also noted that at least one bank that was offering a deposit advance product was likely to be affected by the Rule's provisions.[302] Similarly, any depository institution that might have considered offering a deposit advance product was likely to be affected by the Rule's provisions.[303] The Bureau also recognized that some community banks and credit unions occasionally make short-term secured or unsecured loans, but noted the Bureau believed that those loans generally fall within the conditional exemption for alternative loans or the conditional exemption for accommodation loans under § 1041.3(e) and (f), respectively.[304] Similarly, the Bureau recognized that some firms in the financial technology space are seeking to offer products designed to enable consumers to better cope with liquidity shortfalls, but the Bureau believed that those products, to a significant extent, fall within the exclusion for wage advance programs under § 1041.3(d)(7) or the exclusion for no-cost advances under § 1041.3(d)(8).[305]

In addition to short-term lenders, lenders making longer-term balloon-payment loans (either vehicle title or unsecured) are also covered by the Rule's requirements concerning underwriting and RISes. It follows that lenders of each of these types will experience effects much like those of short-term lenders by the proposed revocation of the mandatory underwriting and RIS requirements.

The proposal's revocation of mandatory underwriting and RIS requirements carries implications relating to recordkeeping requirements that apply to any lender making covered short-term or longer-term balloon-payment loans. The proposed revocation of the RIS provisions relates to the application process and operational requirements for entities who otherwise would have sought to become RISes.[306]

4. Description of the Baseline

The major impact of the proposal on which the Bureau is seeking public comment would be to eliminate the Federal regulations requiring underwriting of covered short-term and longer-term balloon-payment loans. No lenders are required to comply with the 2017 Final Rule until the compliance date (which currently is August 19, 2019) and until the court in litigation challenging the 2017 Final Rule lifts its stay of the compliance date. Accordingly, if the Bureau makes its proposal final before lenders have to comply with the Mandatory Underwriting Provisions in the 2017 Final Rule, then no lenders will have had to comply with them. As a practical matter, issuing regulatory requirements and revoking them before covered entities have had to actually comply with them means there is little effect on stakeholders from the combined effect of issuing and revoking the requirements, that is, the combined effect is returning to the status quo prior to the agency issuing a final rule.

Nevertheless, the Bureau is considering the agency's two regulatory actions (that is issuing the 2017 Final Rule and proposing to rescind the Mandatory Underwriting Provisions of the 2017 Final Rule prior to its compliance date) separately for section 1022(b)(2) analysis purposes. The issuance was evaluated in a section 1022(b)(2) analysis when the Bureau issued the 2017 Final Rule. The proposed revocation is evaluated in this section 1022(b)(2) analysis.

In considering the potential benefits, costs, and impacts of the proposal to rescind the Mandatory Underwriting Provisions in the 2017 Final Rule, to provide the most comprehensive assessment of the impact that the proposal would have, the Bureau takes as a baseline a scenario in which compliance with the 2017 Final Rule would become mandatory as of August 19, 2019 and compares the effect of the proposal to the market that would exist if, before reaching the compliance date, the Bureau elects to issue a final rule rescinding the Mandatory Underwriting Provisions of the 2017 Final Rule.

In other words, the Bureau takes the 2017 Final Rule as the baseline, and considers economic attributes of the relevant markets as they were (and continue to be) projected to exist under the 2017 Final Rule and the existing legal and regulatory structures (*i.e.,* those that have been adopted or enacted, even if compliance is not yet required) applicable to providers.[307] This approach assumes that any actions already undertaken and those that will be necessary to take in anticipation of the compliance date would also be reversed following revocation; it is the Bureau's belief that this is a reasonable

[301] 82 FR 54472, 54814.

[302] *Id.*

[303] *Id.* at 54815. Notably, on October 5, 2017, the Office of the Comptroller of the Currency (OCC) rescinded guidance that had limited the provision of deposit advance products. 82 FR 47602 (Oct. 12, 2017); *see also* News Release, Office of the Comptroller of the Currency, *Acting Comptroller of the Currency Rescinds Deposit Advance Product Guidance* (NR–2017–118, Oct. 5, 2017), *https://www.occ.treas.gov/news-issuances/news-releases/2017/nr-occ-2017-118.html.* A May 23, 2018 OCC bulletin goes farther, and encourages banks to offer responsible short-term, small-dollar installment loans, which would likely compete with the loans covered by this proposal. Bulletin, Office of the Comptroller of the Currency, *Core Lending Principles for Short-Term, Small-Dollar Installment Lending,* (OCC Bulletin 2018–14, May 23, 2018), *https://www.occ.treas.gov/news-issuances/bulletins/2018/bulletin-2018-14.html.* Additionally, on November 14, 2018, the FDIC issued an RFI seeking public comment on consumer demand for small-dollar credit products, the supply of small-dollar credit products currently offered by banks, and whether there are steps the FDIC could take to better enable banks to provide such products to consumers to meet demand. 83 FR 58566, 58567 (Nov. 20, 2018); *see also* Fed. Deposit Ins. Corp., Financial Institution Letter, *Request for Information on Small-Dollar Lending* (FIL–71–2018, Nov. 14, 2018), *https://www.fdic.gov/news/news/financial/2018/fil18071.pdf.* Given these changes, it is likely that these firms will more seriously consider offering these products under this proposal.

[304] 82 FR 54472, 54815.

[305] *Id.* The Bureau also believes many current fintech offerings fall outside of at least the mandatory underwriting requirements of the Rule, as they often focus on longer-term lending without balloon payments.

[306] In this part, the Bureau's references to RISes generally include firms in any stage of becoming an RIS, whether they would have been preliminarily approved, provisionally registered, or would have completed the process at the time this proposal would, if adopted, go into effect.

[307] The Bureau has discretion in each rulemaking to choose the relevant provisions to discuss and to choose the most appropriate baseline for that particular rulemaking in its analysis under section 1022(b)(2)(A) of the Dodd-Frank Act.

assumption but seeks comment on any such changes.[308]

As noted above, the Bureau has considered the same information as it considered in the section 1022(b)(2) analysis of the 2017 Final Rule and has chosen not to revisit the specific methodologies in that analysis. As such, the expected impacts articulated in those analyses are taken as features of the baseline in this analysis. The Bureau welcomes comments on this approach.

The baseline specifically recognizes the wide variation in State-level restrictions that currently exist. As described in greater detail in the 2017 Final Rule, there were at that time 35 (now 33) States that either have created a carve-out from their general usury cap for payday loans or have no usury caps on consumer loans.[309] The remaining 15 (now 17) States and the District of Columbia either ban payday loans or have fee or interest rate caps that payday lenders apparently find too low to sustain their business models. Except as described below, this proposal would have minimal impact on covered persons in these States, and State law would still be binding on the markets in these areas. Further variation exists across the States that allow payday loans, as States vary in their payday loan size limits and their restrictions related to rollovers (*e.g.,* when they are permitted and whether they are subject to certain limitations, such as a cap on the number of rollovers or requirements that the borrower amortize—*i.e.,* repay part of the original loan amount—on the rollover). Numerous cities and counties within these States have also passed local ordinances restricting the location, number, or product features of payday lenders.[310] Restrictions on vehicle title lending similarly vary across and within States, in a manner that often (but not always) overlaps with payday lending restrictions. Overall, these restrictions result in fewer than half of States allowing single-payment vehicle title loans that are covered by the Mandatory Underwriting Provisions of the 2017 Final Rule.[311]

Another notable feature of the baseline is the restriction in the Military Lending Act (MLA) to address concerns about the extension of high-cost credit to servicemembers.[312] The MLA, as implemented by the Department of Defense, requires, among other things, that the creditor may not impose a military annual percentage rate (MAPR) greater than 36 percent in connection with an extension of consumer credit to a covered borrower. In 2007, the Department of Defense issued its initial regulation under the MLA, limiting the Act's application to closed-end loans with a term of 91 days or less in which the amount financed did not exceed $2,000, closed-end vehicle title loans with a term of 181 days or less, and closed-end tax refund anticipation loans.[313] This covered most short-term and longer-term payday and vehicle title loans. These regulations remain in effect and affect the terms of loans available to servicemembers.[314]

In considering the benefits, costs, and impacts of the proposal, the Bureau uses this baseline. More specifically, the Bureau notes that the 2017 Final Rule and this proposal would have limited impacts, with some limited exceptions, for consumers in States that currently do not allow such lending or that impose usury limits that have led payday and vehicle title lenders to refrain from doing business in those States, or for consumers who are not eligible for such lending.[315] It is possible that consumers in these States access such loans online, by crossing State lines, or through other means. To the extent the 2017 Final Rule would limit such lending, this proposal may impact these consumers. Similarly, in States which regulate payday lending in ways that prevent or limit the volume of loans extended, the 2017 Final Rule and the proposal would have fewer impacts on consumers and covered persons, as the State laws may already restrict lending. The overall effects of these more restrictive State laws were described in the 2017 Final Rule and earlier in this proposal. In the remaining States—those that allow lending covered by the 2017 Final Rule without any binding limitations—the proposal would have its most substantial impacts relative to the 2017 Final Rule baseline.

Notably, the quantitative simulations set forth in the 2017 Final Rule and summarized below reflect these variations in the baseline across States and across consumers with one exception. The data used for the 2017 Final Rule's analysis inherently capture the nature of shocks to, and mismatches in the timing between, consumers'

[308] The Bureau also notes that compliance readiness is ongoing, and lenders may or may not continue to incur costs in anticipation of needing to comply unless and until uncertainty around the Mandatory Underwriting Provisions is resolved.

[309] For a list of States, see Pew Charitable Trusts, *State Payday Loan Regulation and Usage Rates* (Jan. 14, 2014), *http://www.pewtrusts.org/en/multimedia/data-visualizations/2014/state-payday-loan-regulation-and-usage-rates.* Other reports reach slightly different totals of payday authorizing States depending on their categorization methodology. *See, e.g.,* Susanna Montezemolo, *The State of Lending in America & Its Impact on U.S. Households: Payday Lending Abuses and Predatory Practices,* at 32–33 (Ctr. for Responsible Lending, 2013), *http://www.responsiblelending.org/sites/default/files/uploads/10-payday-loans.pdf;* Consumer Fed'n of Am., *Legal Status of Payday Loans by State, http://www.paydayloaninfo.org/state-information* (last visited Feb. 4, 2019) (listing 32 States as having authorized or allowed payday lending). Since publication of these reports, South Dakota enacted a 36 percent usury cap for consumer loans. Press Release, S.D. Dep't of Labor and Reg., *Initiated Measure 21 Approved* (Nov. 10, 2016), *http://dlr.sd.gov/news/releases16/nr111016_initiated_measure_21.pdf.*

Legislation in New Mexico prohibiting short-term payday and vehicle title loans went into effect on January 1, 2018. Regulatory Alert, N.M. Reg. and Licensing Dep't, *Small Loan Reforms, http://www.rld.state.nm.us/uploads/files/HB%20347%20Alert%20Final.pdf.* Legislation passed in Ohio placing significant restrictions on short-term loans with an effective date of October 29, 2018. Ohio 132nd General Assembly House Bill 123, *Modify short-term, small, and mortgage loan laws, https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-hb-123.* On February 1, 2019, a ballot initiative approved by voters in November 2018 will go into effect as law in Colorado reducing APRs on payday loans to 36 percent. *See* Colo. Legislative Council Staff, *Initiative #126 Initial Fiscal Impact Statement, https://www.sos.state.co.us/pubs/elections/Initiatives/titleBoard/filings/2017-2018/126FiscalImpact.pdf; see also* Colo. Sec'y of State, *Official Certified Results—State Offices & Questions, https://results.enr.clarityelections.com/CO/91808/Web02-state.220747/#/c/C_2* (Proposition 111).

[310] For a sample list of local payday ordinances and resolutions, see Consumer Fed'n of Am., *Controlling the Growth of Payday Lending Through Local Ordinances and Resolutions* (Oct. 2012), *www.consumerfed.org/pdfs/Resources.PDL.LocalOrdinanceManual11.13.12.pdf; see also, e.g.,* Portland Or., Code sec. 7.26.050; Eugene Or., Code sec. 3.556; Tex. Mun. League, *City Regulation of Payday and Auto Title Lenders, http://www.tml.org/payday-updates.*

[311] For a discussion of State vehicle title lending restrictions, see Consumer Fed'n of Am., *Car Title Loan Regulation* (Nov. 16, 2016), *http://consumerfed.org/wp-content/uploads/2017/01/11-16-16-Car-Title-Loan-Regulation_Chart.pdf.*

[312] The MLA Act, part of the John Warner National Defense Authorization Act for Fiscal Year 2007, was signed into law in October 2006. The interest rate cap took effect October 1, 2007. *See* 10 U.S.C. 987.

[313] 72 FR 50580 (Aug. 31, 2007).

[314] As noted in the 2017 Final Rule, effective October 2015 the Department of Defense expanded its definition of covered credit to include open-end credit and longer-term loans so that the MLA protections generally apply to all credit subject to the requirements of Regulation Z (12 CFR part 1026), which implements the Truth in Lending Act, other than certain products excluded by statute. 80 FR 43560 (July 22, 2015) (codified at 32 CFR part 232).

[315] The 2017 Final Rule would affect such consumers to the extent that they would otherwise cross State lines to obtain a covered short-term or longer-term balloon-payment loan or borrow from an unlicensed lender. Evidence of consumers crossing State borders to obtain loans suggests these consumers overwhelmingly reside near a border with a State that allows such lending (see Onyumbe Enumbe Lukongo & Thomas W. Miller, *Adverse Consequences of the Binding Constitutional Interest Rate Cap in the State of Arkansas* (Mercatus Working Paper 2017), *https://www.mercatus.org/system/files/lukongo_wp_mercatus_v1.pdf* for one example). As such, the potential impacts on consumers residing in payday restricting States is likely concentrated in those consumers near a border who are willing and able to cross to obtain a payday loan.

income and payments that drive much of the demand for covered short-term and longer-term balloon-payment loans.[316] To the extent that these shocks and mismatches have not changed since the time periods covered by the data (2011–2012), they are captured in the simulations. The analysis is also based on the statutory and regulatory environment extant when the data were compiled. The implication is that to the extent that the environment absent the 2017 Final Rule has changed in the intervening years, those changes are not reflected in the simulations. More specifically, the simulations will overstate the proposal's effects on lending volume in those areas where other regulatory changes since that time have limited lending. The simulations also will underestimate the proposal's effects on lending volume in any areas where regulatory changes since that time have relaxed restrictions on lending. In general, the Bureau believes that the States have become more restrictive over the past seven years, so that in this respect the simulations here are more likely to overstate than understate the effects of the proposal.[317] That said, the simulation results are generally consistent with the additional estimates, using other data and time periods, provided to the Bureau in industry and alternative credit bureau comments on the 2016 Proposal.

5. Major Impacts of the Proposal

The primary impact of this proposed rule relative to the baseline in which compliance with the Mandatory Underwriting Provisions of the 2017 Final Rule becomes mandatory would be a substantial increase in the volume of short-term payday and vehicle title loans (measured in both number and total dollar value), and a corresponding increase in the revenues lenders realize from these loans. The simulations set forth in the section 1022(b)(2) analysis accompanying the 2017 Final Rule based on the Bureau's data indicate that relative to the chosen baseline payday loan volumes would increase by 104 percent to 108 percent, with an increase in revenue for payday lenders between 204 percent and 213 percent.[318] Simulations of the impact on short-term vehicle title lending predict an increase in loan volumes of 809 percent to 1,329 percent relative to the chosen baseline, with an approximately equivalent increase in revenues. The specific details, assumptions, and structure of these simulations are described in the 2017 Final Rule.[319]

The Bureau expects, again relative to the chosen baseline, that these increases would result in an increase in the number of storefronts relative to the market projected to exist under the 2017 Final Rule. As discussed in the section 1022(b)(2) analysis for the 2017 Final Rule, a decrease in payday storefronts was observed in States that experienced loan volume declines of the magnitude projected to occur for payday loans under the 2017 Final Rule after those States adopted restrictive regulations (*e.g.,* Washington),[320] making a corresponding relative increase likely if the Mandatory Underwriting Provisions are rescinded. This might in turn improve physical access to credit for consumers, especially for consumers in rural areas. Additionally, the increase in storefronts would be likely to impact small lenders and lenders in rural areas more than larger lenders and those in areas of greater population density. However, the practical improvements in consumer physical access to payday loans are not likely to be as substantial as the increase in storefronts may imply. Again as explained in the 2017 Final Rule, in States with substantial regulatory changes that led to substantial decreases in payday storefronts, over 90 percent of borrowers had to travel an additional five miles or less. Additionally, the Bureau anticipated in the 2017 Final Rule that online options would be available to the vast majority of current payday borrowers, including those in rural areas.[321] Assuming that this is correct, the improved physical access to payday storefronts would likely have the largest impact on a small set of rural consumers who would have needed to travel substantially longer to reach a storefront, and who lack access to online payday loans (or strongly prefer loans initiated at a storefront to those initiated online).

Increased revenues (more precisely, increased profits) relative to the chosen baseline are expected to lead many current firms that would have exited the market under the Rule to remain in the market should this proposal take effect.[322] Additionally, many of the restrictions imposed by the 2017 Final Rule could have been voluntarily adopted by lenders absent the Rule but the Bureau has no evidence that they were. That they were not adopted implies the Rule's impacts are welfare-decreasing for lenders. Reversing these restrictions should therefore be welfare enhancing for lenders.

As for the effects on consumers, the Bureau noted in the 2017 Final Rule that the evidence on the impacts of the availability of payday loans on consumer welfare varies. The Bureau found that, in general, the evidence to date suggests that access to payday loans appears to benefit consumers in circumstances where they use these loans for short periods of time and/or to address an unforeseen and discrete need, such as when they experience a transitory and unexpected shock to their incomes or expenses.[323] The Bureau also found that the evidence to date suggests that, in more general circumstances, access to, and intensive use of, these loans appears to make consumers worse off. The Bureau summarized the evidence in the 2017 Final Rule, noting that ''access to payday loans may well be beneficial for those borrowers with discrete, short-term needs, but only if they are able to

[316] The Bureau believes that obtaining additional data to update its estimates would not be a cost-effective enterprise. As noted in text, these results are largely consistent with estimates offered in industry comments on the 2016 Proposal, which provides additional validation that that the available evidence upon which this analysis relies is reliable for these purposes.

[317] Another possible change that could affect the baseline is the June 2018 Community Financial Services of America (a trade association representing payday and small-dollar lenders) revision of its best practices to add that its members should, before extending credit, ''undertake a reasonable, good-faith effort to determine a customer's creditworthiness and ability to repay the loan.'' This practice applies to other small-dollar loans the member makes. *See* Cmty. Fin. Serv. of Am., *Best Practices for the Small-Dollar Loan Industry, https://www.cfsaa.com/files/files/CFSA-BestPractices.pdf* (last visited Feb. 4, 2019).

[318] These calculations are based on the same simulations the Bureau described in the 2017 Final Rule. The Bureau ran a number of simulations based on different market structures that may occur as a result of the Rule. The estimates cited here come from the specifications where lenders would make loans under both the mandatory underwriting and principal step-down approaches. See the 2017 Final Rule for descriptions of all the simulations conducted by the Bureau, and their results. 82 FR 54472, 54824.

[319] The numbers cited here are simply the reverse of the numbers cited in the 2017 Final Rule as being the most likely. There, the Bureau estimated a decrease in loan volumes of 51 to 52 percent and a decrease in revenues of 67 percent to 68 percent for payday loans, and a decrease in both loan volumes and revenues of 89 to 93 percent for vehicle title loans. 82 FR 54472, 54827, 54834. Taking the decreased values as the baseline and reintroducing the reduced loan volumes and revenues yields the numbers cited here.

[320] Supplemental Findings, chapter 3 part B.

[321] This geographic impact on borrowers was discussed specifically in the 2017 Final Rule's section on *Reduced Geographic Availability of Covered Short-Term Loans* in part VII.F.2.b.v which relies heavily on chapter 3 of the Bureau's Supplemental Findings. 82 FR 54472, 54842.

[322] Should lenders have to comply with the Rule prior to the finalization of this proposal, it is possible that firms that exited the market because they had to comply would not return. However, the Bureau believes the demand for loans would remain such that the volume of loans and revenue estimates detailed in this analysis would still result. In this scenario, it is likely that there will be fewer lenders with increased (average) loan volumes.

[323] *See, e.g.,* 82 FR 54472, 54818, and 54842–46.

successfully avoid long sequences of loans.'' [324]

As the 2017 Final Rule, which includes the conditional exemption for loans with a step-down in principal, allows for continued access to the credit that appears most beneficial—that which assists consumers with discrete, short-term needs—the Bureau believed that much of the welfare benefit estimated in the literature would be preserved under the Rule, despite the substantial reduction in availability of reborrowing.[325] Additionally, the 2017 Final Rule limited the potential costs that could be realized by borrowers who would have experienced long durations of indebtedness where the, albeit more limited, literature, and the Bureau's own analysis and study set forth in the 2017 Final Rule suggested that prolonged reborrowing has, on average, negative effects.[326] Given this, the Bureau concluded that the overall impacts of the decreased loan volumes resulting from the 2017 Final Rule's Mandatory Underwriting Provisions on consumers would be positive,[327] it follows that the inverse effects would ensue, relative to the chosen baseline, from this proposal to rescind the 2017 Final Rule. It bears emphasis, however, that the 2017 Final Rule's conclusion as to these effects was dependent upon the evidence that consumers who experienced long durations of indebtedness generally did not anticipate those outcomes and, as discussed above, the agency now believes that this evidence is not sufficiently robust and representative to support the findings necessary to determine that the identified practice is unfair and abusive.

In drafting this proposal, the Bureau has also considered new and additional evidence that was not available at the time of the 2017 Final Rule. There are few such studies that deal with the pecuniary effects of payday loans on consumers, and none that specifically deal with the effects of the loans that would be eliminated by the 2017 Final Rule (*e.g.,* those beyond the fourth loan in a sequence or the seventh non-underwritten loan in a year). As a result, the new studies do not affect the Bureau's analysis as set forth above.

Relative to the considerations above, the remaining benefits and costs of this proposal—again relative to the baseline in which compliance with the 2017 Final Rule will become mandatory—are much smaller in their magnitudes and economic importance. Most of these impacts manifest as reductions in administrative, compliance, or time costs that compliance with the 2017 Final Rule will entail; or as potential costs from revoking aspects of the 2017 Final Rule that could have decreased fraud or increased transparency. The Bureau expects most of these impacts to be fairly small on a per loan/consumer/lender basis. These impacts include, among other things, those applicable to the RISes under the Rule; those associated with reduced furnishing requirements on lenders and consumers (*e.g.,* avoiding the costs to establish connection with RISes, forgone benefits from reduced fraud); those associated with making an ability-to-repay determination for loans that require one (*e.g.,* avoiding the cost to obtain all necessary consumer reports, forgoing the benefit of decreased defaults); those associated with avoiding the Rule's record retention obligations that are specific to the Mandatory Underwriting Provisions; those associated with eliminating the need for disclosures regarding principal step-down loans; and the additional impacts associated with increased loan volumes (*e.g.,* changes in defaults or account closures, non-pecuniary changes to consumer welfare). Each of these benefits and costs, broken down by type of market participant, is discussed in detail below.

The Bureau has also conducted a Paperwork Reduction Act (PRA) analysis to estimate the benefits associated with the proposal's reduction in the hour and dollar costs of the information collection requirements to the entities subject to the 2017 Final Rule. The PRA separates these estimates into one-time and annual ongoing categories for total burden reduction, labor burden hour reduction, and labor burden dollar reduction. As discussed in part X below, a revised Supporting Statement detailing the changes to the information collections for the Rule and their effects on the Rule's overall burden will be made available for public comment on the electronic docket accompanying this proposed rule.

The discussion of impacts that follows is organized into three main categories mentioned above: (1) The revocation of the 2017 Final Rule's requirement to reasonably determine borrowers' ability to repay covered short-term and longer-term balloon-payment loans; (2) the revocation of the recordkeeping requirements associated with (1); and (3) the revocation of the 2017 Final Rule's requirements concerning furnishing provisions. Within each of these main categories, the discussion is organized to facilitate a clear and complete consideration of the benefits, costs, and impacts of the major provisions of this proposed rule. Impacts on depository institutions with $10 billion or less in total assets and on rural consumers are discussed separately below.

B. Potential Benefits and Costs of the Proposal to Consumers and Covered Persons—Provisions Relating Specifically to Ability-To-Repay Determinations for Covered Short-Term and Longer-Term Balloon-Payment Loans

This section discusses the impacts of revoking the Mandatory Underwriting Provisions of the 2017 Final Rule relative to the chosen baseline in which compliance with the Rule was mandatory. Those provisions specifically relate to covered short-term and longer-term balloon-payment loans, and the analyses of their benefits and costs contained in the 2017 Final Rule were sensitive to the potential shifting to products not covered by the Mandatory Underwriting Provisions of the Rule (*i.e.,* the Bureau did not attempt to anticipate how lenders might adjust their offerings in light of the Rule). In the 2017 Final Rule, the Bureau stated that the potential evolution of lender offerings that may arise in response to the Rule was beyond the scope of the section 1022(b)(2) analysis contained therein; [328] similarly the Bureau does not attempt to assess here any strategic de-evolution of the market that will result if compliance with the 2017 Final Rule becomes mandatory.[329]

Revoking the requirements for originations, and the associated restrictions on reborrowing, is likely to have a substantial impact on the markets for these products relative to the markets that exist under the 2017 Final Rule. In order to present a clear analysis of the benefits and costs of the proposal, this section first describes the benefits and costs of the proposal to covered persons relative to the baseline

[324] *Id.* at 54846.

[325] *Id.* at 54818.

[326] *Id.* at 54839, 54842.

[327] *Id.* at 54835, 54842.

[328] *Id.* at 54472, 54818, 54835.

[329] For example, there appears to be a shift in the market away from payday lending toward short-term installment lending. Payday loan revenue from both storefront and online channels declined from 2015 to 2016 by 11.9 percent and 9.9 percent, respectively. By contrast, short-term installment loan revenue was expected to increase 7.5 percent in 2017. Ctr. for Fin. Serv. Innovation, *2017 Financially Underserved Market Size Study,* at 12, 13, 18, 44, and 45 (Dec. 2017), *https://s3.amazonaws.com/cfsi-innovation-files/wp-content/uploads/2018/03/07221553/2017-Market-Size-Report_FINAL_4-1.pdf.* The Bureau does not attempt to anticipate if, or how much of, a move back to payday lending may result from this proposal, as it is beyond the scope of the available evidence, and the Bureau is unaware of any examples in the market that could provide such data.

where compliance with the 2017 Final Rule becomes mandatory and then discusses the implications of the proposal for the markets for these products. The benefits and costs to consumers are then described.

1. Benefits and Costs to Covered Persons

This proposal would rescind a number of operational requirements on lenders making covered short-term and longer-term balloon-payment loans and remove restrictions on the number of these loans that can be made. As this proposal would rescind the requirements associated with the mandatory underwriting approach, it also obviates the need for the principal step-down approach set out in § 1041.6 of the 2017 Final Rule as an alternative to the mandatory underwriting approach in § 1041.5 for making covered short-term and longer-term balloon-payment loans.[330] As the proposal would remove restrictions on the operational requirements for lenders, allowing them to avoid making an ability-to-repay determination, this section discusses the overall benefits and costs to lenders associated with not having to comply with the Mandatory Underwriting Provisions in the 2017 Final Rule rather than having to do so.

a. Revocation of the Operational Requirements Associated With Mandatory Underwriting

Under the proposal, lenders would not be required to make an ability-to-repay determination prior to originating a loan, nor would they be required to ensure adherence to limits on loans made via the principal step-down approach, nor would they need to report loans to RISes to ensure compliance with those limits.

More specifically, under the proposal lenders would not need to consult their own records and the records of their affiliates to determine whether the borrower had taken out any prior covered short-term or longer-term balloon-payment loans that were still outstanding or were repaid within the prior 30 days. Lenders would not need to maintain the ability-to-repay-related records mandated by the 2017 Final Rule. Lenders would not need to obtain a consumer report from an RIS (if available) in order to obtain information about the consumer's borrowing history across lenders, and would no longer be required to furnish information regarding covered short-term and longer-term balloon-payment loans they originate to all RISes. Lenders would also be freed from the obligation imposed by the 2017 Final Rule to obtain and verify information about the amount of an applicant's income (unless not reasonably available) and major financial obligations.

The proposed revocation of each of these operational requirements entails a reduction in costs that were to be incurred under the 2017 Final Rule for loan applications (not just for loans that are originated). Additionally, if and depending on when the proposal is adopted, lenders may not be required to develop or adhere to procedures to comply with each of these requirements and train their staff in those procedures. The Bureau believes that many lenders use automated systems when originating loans, and will modify those systems, or purchase upgrades to those systems, to address many of the operational requirements associated with the Mandatory Underwriting Provisions of the 2017 Final Rule. Reversing the obligation to incur operational costs should be of minimal benefit to lenders. Reversing the obligation in fact may actually result in small costs for any lenders who changed their processes and procedures in anticipation of having to comply with the Rule; however, lenders are under no obligation to reverse these modifications, and so any lender that would incur costs to do so could simply not reverse the modifications to avoid incurring them.

Each of the costs this proposal would obviate is considered in detail in the 2017 Final Rule at part VII.F.

Total Impacts of the Operational Requirements Associated with Mandatory Underwriting. In the 2017 Final Rule, the Bureau estimated that obtaining a statement from the consumer, taking reasonable steps to verify income, obtaining a national consumer report and a report from an RIS, projecting the consumer's residual income or debt-to-income ratio, estimating the consumer's basic living expenses, and arriving at a reasonable ability-to-repay determination will take essentially no additional time for a fully automated electronic system and between 15 and 45 minutes for a fully manual system. The Bureau further noted total costs would depend on the existing utilization rates of, and wages paid to, staff that will spend time carrying out this work. To the extent that lenders needed to increase staff and/or hours to comply with the 2017 Final Rule's operational requirements with respect to the mandatory underwriting approach, under the proposal they would experience decreased costs from hiring, training, wages, and benefits relative to what will occur under the 2017 Final Rule.

Additional savings under this proposal would come from what would have been an obligation to obtain a national consumer report costing between $0.55 and $2.00, and/or a report from an RIS costing $0.50. Lenders using third-party services to gather verification information about income would realize an additional small benefit under the proposal from avoiding the fees associated with using these services.

Developing Procedures, Upgrading Systems, and Training Staff. Under the 2017 Final Rule, lenders must develop policies and procedures to comply with the requirements of the Mandatory Underwriting Provisions and train their staff in those procedures. Many of these requirements are not qualitatively different from the practices in which most lenders would engage absent the 2017 Final Rule—such as gathering information and documents from borrowers and ordering various types of consumer reports—though the Rule's requirements may demand more, and more costly, efforts to obtain such information and documents.

Developing procedures to make a reasonable determination that a borrower has the ability to repay a loan without reborrowing while paying for major financial obligations and basic living expenses will likely be costly and challenging for many lenders. The Bureau expected that vendors, law firms, and trade associations will likely offer both products and guidance to lenders, potentially mitigating the cost of these procedures for lenders, because such service providers can realize economies of scale.[331]

The Bureau estimated that lender staff engaging in making loans would require approximately 5 hours per employee of initial training in carrying out the tasks described in the 2017 Final Rule and 2.5 hours per employee per year of periodic ongoing training; lenders would benefit

[330] The principal step-down approach is an alternative to the mandatory underwriting approach detailed in 12 CFR 1041.6. Under this approach, a lender would not need to determine ability-to-repay for an initial loan of up to $500. Subsequent loans issued within 30 days of an initial loan would need to amortize by one-third of the principal of the previous loan, and no more than three loans in a sequence, or six loans in a rolling 12-month period would be permitted. After reaching the limit imposed by the principal step-down approach, borrowers would need to obtain all further loans via the mandatory underwriting approach.

[331] As noted above, the Bureau believes that many lenders use automated systems when originating loans, and will incorporate many of the operational requirements of the mandatory underwriting approach into those systems. While this may mitigate some of the costs discussed here, the operational costs will remain substantial.

if they did not have to incur these time costs if the Bureau adopts this proposal.

b. Operational Requirements—Principal Step-Down Approach

All of the costs described in the 2017 Final Rule associated with the principal step-down approach would be ultimately unnecessary under the proposal. This is because the principal step-down approach is an alternative to using the mandatory underwriting approach to issue new loans. Under this proposal, lenders would generally be expected to continue their pre-2017 Final Rule practices, and need not engage in any of the principal step-down procedures. As such, all benefits and costs associated with that approach would be eliminated under this proposal. This includes avoiding the system upgrades and time costs of providing the required disclosures.

c. Effect on Loan Volumes and Revenue From Eliminating Underwriting Requirements and Restrictions on Certain Reborrowing

In the 2017 Final Rule, the Bureau described the estimated effects of the underwriting requirements under the mandatory underwriting approach and the restrictions on certain reborrowing under both the mandatory underwriting approach and principal step-down approach. Those estimates were based on simulations, and the estimated effects on lender revenue were far more substantial than the increase in compliance costs from implementing the requirements.

In order to simulate the effects of the 2017 Final Rule, it was necessary to impose an analytic structure and make certain assumptions about the impacts of the Rule, and apply them to the data. The Bureau conducted three simulations of the potential impacts of the 2017 Final Rule on payday loan volumes—one each under the assumptions that loans are only made using the mandatory underwriting approach, that loans are made only under the principal step-down approach, and what the Bureau believed to be the most realistic assumption, that loans are made under both approaches—and a single vehicle title simulation.[332] The results of the simulations are reviewed here; the structure, assumptions, and data used by the Bureau were described in detail in the 2017 Final Rule.[333] None of the underlying data, assumptions, or structures have changed in the Bureau's analysis of the impacts of this proposal. As such, the description in the 2017 Final Rule also describes the simulations used here. Moreover, the estimated effects on loan volumes of rescinding the underwriting requirements are simply the effects as determined in the 2017 Final Rule of implementing these requirements. To assist the agency in doing a Section 1022 analysis for any proposed final rule revoking the 2017 Final Rule, the Bureau seeks comment on the structure, assumptions, and data the agency used in these simulations.

The Bureau's simulations suggest that storefront payday loan volumes would increase between 104 percent and 108 percent under this proposal relative to the 2017 Final Rule baseline. The Bureau estimates that revenues of storefront payday lenders would be between 204 percent and 213 percent higher if they do not have to comply with the requirements in the 2017 Final Rule.[334] While these simulated results are based on data from storefront payday lenders, the Bureau explained in the 2017 Final Rule that the impacts are likely to be similar for online payday lenders;[335] the Bureau believes that to be the likely case with the proposal as well. Using the most recent estimated revenues for payday lenders by Center for Financial Services Innovation's (CFSI), lenders not having to comply with the requirements in the 2017 Final Rule would translate to an increase in their annual revenues of approximately $3.4 billion to $3.6 billion.[336]

For vehicle title lending, the simulated impacts are larger. The Bureau's simulations suggest that relative to the 2017 Final Rule baseline vehicle title loan volumes would increase under the proposal by between 809 percent and 1,329 percent, with a corresponding increase in revenues for vehicle title lenders.[337] Using CFSI's most recent estimated revenues for vehicle title lenders, this would mean the proposed elimination of the Mandatory Underwriting Provisions of the 2017 Final Rule would translate into an increase in annual revenues for these lenders of approximately $3.9 billion to $4.1 billion.[338] It is also possible the impact on vehicle title lending would be even larger than the simulations suggest. If the industry were not able to survive as a result of complying with the Mandatory Underwriting Provisions of the 2017 Final Rule, the proposal could effectively resurrect the vehicle title lending industry relative to the baseline. In this case, the increased revenues from the proposal would be equal to the entire vehicle title lending industry's estimated annual revenue of approximately $4.4 billion.[339]

A notable impact of this increase in loan volumes and revenues is that many storefronts would likely exist under the proposal that would not if they had to comply with the Mandatory Underwriting Provisions of the 2017 Final Rule. A pattern of contractions in storefronts has played out in States that have imposed laws or regulations that resulted in similar reductions in volume as those projected under the 2017 Final Rule. To the extent that lenders cannot replace reductions in revenue by adapting their products and practices, it follows that such a contraction—or, in the case of vehicle title, an elimination—would be a likely (perhaps inevitable) response to complying with the Mandatory Underwriting Provisions of the 2017 Final Rule. It likewise

[332] As vehicle title loans are not eligible for the principal step-down approach, simulating the effects on this market was more straightforward than for payday. As alternative assumptions about the prevalence of loans issued via the principal step-down vs. mandatory underwriting approaches were not appropriate, only a single structure for the vehicle title simulations was assumed.

[333] 82 FR 54472, 54824.

[334] The loan volume and revenue estimates differ for payday loans as the 2017 Final Rule imposed limits on the sizes of loans issued under the principal step-down approach, as well as limits on the sizes of reborrowed loans. In the 2017 Final Rule, the Bureau estimated that approximately 40 percent of the reduction in revenues resulted from limits on loan sizes, while the remaining 60 percent was the result of decreased loan volumes. *Id.* at 54827. The increases in revenues presented here are estimated to stem from the same sources, in the same proportions (*i.e.,* approximately 40 percent from larger loans, and approximately 60 percent from additional loans).

[335] *Id.* at 54833.

[336] Based on pre-2017 Final Rule estimated revenues for payday lenders of approximately $5.3 billion, reported in Eric Wilson & Eva Wolkowitz, *2017 Financially Underserved Market Size Study,* at 44 (Ctr. for Fin. Serv. Innovation, Dec. 2017), *https://s3.amazonaws.com/cfsi-innovation-files-2018/wp-content/uploads/2017/04/27001546/2017-Market-Size-Report_FINAL_4.pdf,* with medium confidence.

[337] As vehicle title loans are ineligible for the principal step-down approach under the 2017 Final Rule, there was no binding limit on the size of these loans. This resulted in a larger decrease in volumes for vehicle title loans relative to payday (as loans could only be issued under the mandatory underwriting approach), but ensured the corresponding decrease in revenues was more similar to the decrease in loan volumes (since all issued loans were unrestricted in their amounts relative to the Rule's baseline). The increases cited here follow a similar pattern, for similar reasons.

[338] Based on pre-2017 Final Rule estimated revenues for vehicle title lenders of approximately $4.4 billion, reported in Eric Wilson & Eva Wolkowitz, *2017 Financially Underserved Market Size Study,* at 46 (Ctr. for Fin. Serv. Innovation, Dec. 2017), *https://s3.amazonaws.com/cfsi-innovation-files-2018/wp-content/uploads/2017/04/27001546/2017-Market-Size-Report_FINAL_4.pdf,* with medium confidence.

[339] *Id.* In a similar vein, if the 2017 Final Rule had not contained the principal step-down exemption it too could have affected the survival of the payday loan industry.

follows that, under the proposal, there would be a corresponding increase in the number of storefronts relative to the number of them that would exist if they had to comply with the requirements of the 2017 Final Rule.

The Bureau notes that in recent years there has been a gradual shift in the market towards longer-term loans where permitted by State law. The Bureau does not have sufficient data to assess whether that trend has accelerated since the issuance of the 2017 Final Rule in anticipation of the compliance date.[340] This was considered in the 2017 Final Rule as well.[341] To the extent these lenders have already made these adaptations, and would not shift their business practices back if this proposal were adopted, the loan volume and revenue estimates above may be somewhat overstated.

2. Benefits and Costs to Consumers

a. Benefits to Consumers and Access to Credit

The operational requirements of the Mandatory Underwriting Provisions of the 2017 Final Rule would make the process of obtaining a loan more time consuming and complex for some borrowers (*e.g.,* online borrowers and vehicle title borrowers who may not currently be required to provide any documentation of income). The restrictions on lending in the 2017 Final Rule will reduce the availability of storefront payday loans, online payday loans, single-payment vehicle title loans, longer-term balloon-payment loans, and other loans covered by the Mandatory Underwriting Provisions of the Rule. Borrowers will likely experience reduced access to new loans—*i.e.,* loans that are not part of an existing loan sequence—from these restrictions. Some borrowers also will be prevented from rolling loans over or reborrowing shortly after repaying a prior loan under the 2017 Final Rule. Some borrowers might still be able to borrow, but for smaller amounts or with different loan structures, and might find this less preferable to them than the terms they would have received absent the 2017 Final Rule. The proposal would reverse each of these effects that would otherwise result from the 2017 Final Rule, decreasing the time and effort consumers would need to expend to obtain a covered short-term or longer-term balloon-payment loan, and improving their access to credit, which may carry pecuniary and non-pecuniary benefits.

The Bureau's simulations (discussed above) suggest that the 2017 Final Rule's requirements (again including the principal step-down exemption) will prevent between 5.9 and 6.2 percent of payday borrowers from initiating a sequence of loans that they would have initiated absent the Rule.[342] That is, since most consumers take out six or fewer loans each year, and are not engaged in long sequences of borrowing, the Rule as a whole will not limit their borrowing. However, if the proposal is adopted, consumers would be able to extend their sequences beyond three loans and would not be required to repay one-third of the loan each time they reborrow. As a result, many loans would be taken out beyond the sequence limitations imposed by the 2017 Final Rule (*e.g.,* fourth and subsequent loans within 30 days of the prior loan); these loans account for the vast majority of the additional volume in the Bureau's simulations.

Revocation of Operational Requirements. The Bureau is proposing to rescind the operational requirements associated with underwriting loans originated via the mandatory underwriting approach, and the various recordkeeping procedures associated with the principal step-down approach. As such, under the proposal, the process of obtaining funds should be faster for consumers compared to the baseline of the 2017 Final Rule. Consumers obtaining loans that would have been subject to the Rule's mandatory underwriting requirements would see the most significant gains under the proposal. Estimates of the time required to manually process an application suggest that eliminating the mandatory underwriting requirements would subtract 15 to 45 minutes from the borrowing process, a consideration many of these consumers may find important given than convenience is an important product feature on which payday lenders compete for customers.[343] Additionally, borrowers would not need to obtain and provide to the lender certain documentation mandated under the mandatory underwriting requirements; the proposal would minimize the complexity of the process, and obviate the need for repeat trips to the lender if the borrower did not bring all the required documents initially, thereby making the payday loan process more convenient for consumers seeking loans that would otherwise been subject to the mandatory underwriting requirements. The proposal would thus decrease both the complexity and length of the process used for consumers who are seeking to obtain a covered short-term or longer-term balloon-payment loan that otherwise would have been subject to the mandatory underwriting requirements.

Improved Access to Initial Loans. As this proposal would remove the restrictions on obtaining a loan stemming from the 2017 Final Rule's Mandatory Underwriting Provisions' requirements consumers would have increased access to loans. Initial covered short-term loans—*i.e.,* those taken out by borrowers who have not recently had a covered short-term loan—are presumably taken out because of a need for credit that is not the result of prior borrowing of covered short-term loans. Under the 2017 Final Rule, borrowers might be unable to take out new loans (those originated more than 30 days after their last loan) for at least two reasons: They may only have access to loans made under the mandatory underwriting requirements and be unable to demonstrate an ability to repay the loan under the Rule, or they may be unable to satisfy any additional underwriting requirements adopted by lenders in response to, though not required by, the Rule.

If lenders had to comply with the 2017 Final Rule, payday borrowers would not be likely to face the prescribed mandatory underwriting requirement unless and until they have exhausted the limits on loans available to them under the principal step-down

[340] Since the issuance of the 2017 Final Rule, Florida and Alabama have amended their laws to open the door to longer-term loans at interest rates above the standard usury limit. *See* Ala. Code sec. 5–18A; Fla. Stat. Ann. sec. 560.404. On the other hand, a voter referendum in Colorado has resulted in a law, effective February 1, 2019, that capped interest rates on certain longer-term loans. *See* Colo. Legislative Council Staff, *Initiative #126 Initial Fiscal Impact Statement, https://www.sos.state.co.us/pubs/elections/Initiatives/titleBoard/filings/2017-2018/126FiscalImpact.pdf; see also* Colo. Sec'y of State, *Official Certified Result—State Offices & Questions, https://results.enr.clarityelections.com/CO/91808/Web02-state.220747/#/c/C_2 (Proposition 111).*

[341] 82 FR 54472, 54835.

[342] The section-by-section analysis accompanying the 2017 Final Rule identified three categories of borrowers based upon their ex post behavior: Repayers (those who take out a single loan and repay it without the need to reborrow within 30 days); defaulters (those who default after taking out a single loan or at the end of a sequence of loans); and reborrowers (those who take out a sequence of loans which ends with repayment). The simulation did not attempt to estimate which type(s) of consumers would be prevented from initiating a sequence of loans under the 2017 Final Rule or which type(s) of consumer would be able to obtain loans under the principal step-down exemption.

[343] The Bureau noted in the 2017 Final Rule that it anticipated that most lenders would use automation to make the ability-to-repay determination, which would take substantially less time to process. *See* 82 FR 54472, 54631, 54632 n.767. For those borrowers seeking loans from these lenders, the time savings under the proposal would be substantially smaller.

approach, or unless the borrower is seeking a loan in excess of $500 or secured by a vehicle title (as the costs and restrictions associated with the principal step-down approach are generally lower compared to the mandatory underwriting approach, so loans under the principal step-down approach are likely to be used prior to loans under the mandatory underwriting approach, all else being equal). However, to obtain loans under the Rule's principal step-down approach, lenders might elect to require borrowers to satisfy more exacting underwriting requirements than would be applied by lenders if the proposal is adopted. This is because under the proposal lenders would be able to obtain more revenue from loans that are reborrowed in excess of the limits that would be imposed by the principal step-down approach, and would thus be willing to continue issuing loans to somewhat riskier borrowers. Moreover, after exhausting the limits on principal step-down approach loans in the Rule, borrowers would be required to satisfy the mandatory underwriting requirement to obtain a new loan; under the proposal, however, those more stringent requirements would no longer apply.

Based on the simulations contained in the 2017 Final Rule, the Bureau estimates that under the proposal about five percent more initial payday loans (*i.e.,* those that are not part of an existing sequence) would occur due to the revocation of the annual loan limits, and roughly six percent more borrowers would be able to initiate a new sequence of loans that they could not start under the 2017 Final Rule. That is, under the proposal five percent more payday loans that likely reflect a new need for credit would be allowed (based on the proposed removal of the annual limits on borrowing) and six percent of payday borrowers would have access to new sequences of loans as compared to the chosen baseline. Vehicle title borrowers are likely to realize greater benefits from increased access to loans relative to payday borrowers.

Consumers who would be able to obtain a new loan because of the proposal would not be faced with the effects of the 2017 Final Rule, including not being forced to forgo certain purchases, incur high costs from delayed payment of existing obligations, or incur high costs and other negative impacts by simply defaulting on bills; nor would they face the need to borrow from sources that are more expensive or otherwise less desirable. These borrowers may avoid overdrafting their checking accounts, which may be more expensive than taking out a payday or single-payment vehicle title loan. Similarly, they may avoid ''borrowing'' by paying a bill late, which can lead to late fees (which may or may not be more expensive than a payday or vehicle title loan) or other negative consequences like the loss of utility service.

Survey evidence provides some information about what borrowers are likely to do if they do not have access to these loans. Using the data from the CPS Unbanked/Underbanked supplement, researchers found that the share of households using pawn loans increased in States that banned payday loans, to a level that suggested a large share of households that would otherwise have taken out payday loans took out pawn loans instead.[344] A 2012 survey of payday loan borrowers found that a majority indicated that if payday loans were unavailable they would reduce expenses, delay bill payment, borrow from family or friends, and/or sell or pawn personal items.[345] Under the proposal, these consumers would not lose access to payday loans where it is their preferred method of credit.

Elimination of Limits on Loan Size. The 2017 Final Rule placed limits on the size of loans lenders may issue via the principal step-down approach, which, as discussed above, is one of the requirements for the conditional exemption from the mandatory underwriting approach for covered short-term loans. These limits are $500 for the initial loan, with each subsequent loan in a sequence decreasing by at least one-third the amount of the original loan. For example, a $450 initial loan would mean borrowers are restricted to no more than $300 for a second loan, and no more than $150 for a third loan. By eliminating these restrictions, the proposal would allow borrowers (specifically, borrowers who cannot satisfy the mandatory underwriting requirements for covered short-term loans and thus who can only borrow under the principal step-down approach) to take out larger initial loans (where allowed by State law), and reborrow these loans in their full amount. In the simulation that the 2017 Final Rule stated best approximates the market as it would exist under the Rule,[346] around 40 percent of the increase in payday loan revenues described in part VIII.B.1.c above would be the result of eliminating the $500 cap on initial loans and step-down requirements on loans issued via the principal step-down approach.

Elimination of Limits on Reborrowing. For storefront payday borrowers, most of the increase in the availability of credit if the proposal is adopted would be due to borrowers who have recently taken out loans being able to roll over their loans or borrow again within a shorter period of time as compared to the baseline of the 2017 Final Rule. This is because the mandatory underwriting and principal step-down provisions in the 2017 Final Rule impose limits on the frequency, timing, and amount of reborrowing and the proposal if adopted would lift these limitations.

The lessened constraints on reborrowing would additionally benefit consumers who wish to reborrow loans that would have been made via the principal step-down approach under the Rule but are unable to decrease the principal of their loans. For example, consider a borrower who has a loan due and is unable to repay one-third of the original principal amount (plus finance charges and fees) as required to obtain a second loan under the principal step-down approach, but who anticipates an upcoming influx of income. Under this proposal, such a borrower would experience the benefit of being able to reborrow the full amount of the loan until such time as the borrower realizes that income.[347] This improved access to credit could result in numerous benefits, including avoiding delinquencies on the loan and the potential NSF fees associated with such delinquencies, or avoiding the negative consequences of being compelled to make unaffordable amortizing payments on the loan. However, the Bureau's simulations suggest that the majority of the increased access to credit would

[344] Neil Bhutta et al., *Consumer Borrowing after Payday Loan Bans,* 59 J. of L. and Econ. 225 (2016).

[345] Pew Charitable Trusts, *Payday Lending in America: Who Borrows, Where They Borrow, and Why,* at 16 (Report 1, 2012), *https://www.pewtrusts.org/~/media/legacy/uploadedfiles/pcs_assets/2012/pewpaydaylendingreportpdf.pdf* (reporting $375 as the average).

[346] In the 2017 Final Rule, the Bureau describes the results from simulations under three sets of assumptions. This proposal presents results from the simulation approach preferred by the Bureau in the 2017 Final Rule as the one most likely to reflect the effects of the Rule, wherein borrowers are assumed to: Take principal step-down loans initially, apply for loans subject to an ability-to-repay determination only after exhausting the principal step-down loans, and be approved for each loan under the mandatory underwriting approach with a probability informed by industry estimates.

[347] Necessarily mitigating this benefit is the fact that defaulting on a payday loan has relatively few direct costs, while there are non-trivial direct costs associated with each instance of reborrowing. As such, this benefit would be most significant for those consumers with a high likelihood of the necessary influx of income being realized after fewer instances of reborrowing.

result from the proposal's lifting of the reborrowing restrictions, rather than its removal of the initial loan size cap and the forced step-down features of loans made via the principal step-down approach.

The Bureau does not believe the proposal, if adopted, would lead to a substantial decrease in instances of borrowers defaulting on payday loans, in part because the 2017 Final Rule's principal step-down provisions likely would encourage many consumers to reduce their debt over subsequent loans, rather than to default. It is necessarily true, however, that some borrowers who would be able to reborrow the full amount of the initial loan under the proposal may avoid a default that would have occurred under the Mandatory Underwriting Provisions of the Rule. This would be true for borrowers who would not have been able to successfully make the step-down payment on the principal step-down schedule, but can afford to pay just the fees (*i.e.,* the reborrowing cost) and then eventually repay the loan in full when they experience a positive income shock. These borrowers will thus avoid the costs of default as discussed below and enjoy the benefit of remaining in good standing with their lender and eligible for future borrowing when needed.

Increased Geographic Availability of Covered Short-Term Loans. Consumers would also have somewhat greater physical access to payday storefront locations under the proposal relative to the 2017 Final Rule baseline. As explained in the 2017 Final Rule, Bureau research on States that have enacted laws or regulations that led to substantial decreases in the overall revenue from storefront lending indicates that the number of stores has declined roughly in proportion to (*i.e.,* by roughly the same percentage as) the decline in revenue.[348] It follows that the proposal's impact on increasing the revenue of payday lenders relative to the 2017 Final Rule baseline should lead to a corresponding increase in the number of stores. This benefit is somewhat mitigated by the way payday stores locate, however. Nationwide, the median distance between a payday store and the next closest payday store is only 0.3 miles. When a payday store closes in response to laws that reduce revenue, there is usually a store nearby that remains open. For example, across several States with regulatory changes, between 93 and 95 percent of payday borrowers had to travel fewer than five additional miles to find a store that remained open. This is roughly equivalent to the median travel distance for payday borrowers nationwide. Using the loan volume impacts previously calculated above for storefront lenders, the Bureau forecasts that a large number of storefronts will remain open under the proposal that would have closed under the 2017 Final Rule, but that consumers' geographic access to stores will not be substantially affected in most areas.[349] The Bureau noted, however, that for consumers seeking single-payment vehicle title loans, the benefits would be far larger as the 2017 Final Rule's estimated impacts would lead to an 89 to 93 percent reduction in revenue which could affect the viability of the industry.[350]

b. Costs to Consumers

Relative to the 2017 Final Rule baseline, the available evidence suggests that the proposal would impose potential costs on consumers by increasing the risks of: Experiencing costs associated with extended sequences of payday loans and single-payment vehicle title loans; experiencing the effects (pecuniary and non-pecuniary) of delinquency and default on these loans; defaulting on other major financial obligations; and/or being unable to cover basic living expenses in order to pay off covered short-term and longer-term balloon-payment loans.[351]

Extended Loan Sequences. As discussed in greater detail in the 2017 Final Rule, the available evidence suggests that, absent that Rule, a material percentage of borrowers who take out storefront payday loans and single-payment vehicle title loans often end up taking out many loans in a row. This evidence came from the Bureau's own work, as well as analysis by independent researchers and analysts commissioned by industry. This proposal's removal of the 2017 Final Rule's limitations on making loans to borrowers who have recently had relevant covered short-term and longer-term balloon-payment loans would enable borrowers to continue to borrow in these longer sequences of loans. As discussed above, some consumers who would choose under the proposal to reborrow beyond the limits imposed by the 2017 Final Rule might realize benefits, but would not be able to do so in the baseline. The evidence suggests, however, that the majority of consumers who would choose under the proposal to reborrow beyond the limits imposed by the 2017 Final Rule would incur costs, costs they would not incur under the baseline. Studies have suggested that potential consequences from such reborrowing include increases in the delays in payments on other financial obligations, involuntary checking account closures, NSF and overdraft fees, financial instability, stress and related health measures, and decreases in consumption.[352] (The elimination of the step-down structure imposed by the 2017 Final Rule's Mandatory Underwriting Provisions may have similar effects; however, the Bureau is not aware of any studies that address this possibility.)

However, these observed seemingly negative outcomes do not necessarily imply a decrease in consumer surplus. A conclusion that these impacts result in negative consumer surplus requires not just that the apparent impacts on consumers are negative, but also that these impacts were not accurately anticipated by the consumers and that consumers would have made different choices with more complete information. If these are the impacts of initiating a loan sequence for a significant share of consumers, and these impacts are not accurately anticipated (*e.g.,* if consumers do not fully understand how long they are likely to be in debt), then economic analysis would suggest the effect on consumer surplus is likely negative. If, on the other hand, consumers making their initial borrowing decisions accurately anticipate the potential for these impacts, then the effect on consumer surplus is likely to be (at least weakly) positive, as there would be unobserved, unquantifiable, offsetting benefits.

The Bureau weighed these possible outcomes in the 2017 Final Rule in part

[348] 82 FR 54472, 54487.

[349] The positive effects of increased storefront access are likely to be relatively larger in more rural areas; the impacts of this proposal on rural areas are considered in more detail below. There may also be benefits to consumers from other ''convenience factors'' associated with increased competition. Examples could include longer hours during which a nearby payday store is open, shorter wait times, etc. However, the Bureau lacks data or evidence that would allow for a conclusion that such benefits would result from the proposal, if adopted.

[350] 82 FR 54472, 54817, 54834–35.

[351] As mentioned previously, the effects associated with longer-term balloon-payment loans are likely to be small relative to the effects associated with payday and vehicle title loans. This is because longer-term balloon-payment loans are uncommon in the baseline against which costs are measured.

[352] The studies describing these results are discussed in the section 1022(b)(2) analysis of the 2017 Final Rule (82 FR 54472, 54842–46) and below. As described therein, some of these studies differentiate between shorter and longer loan sequences. The majority of studies, however, rely on access to loans as their source of variation, and cannot make such distinctions. Similarly, few of these studies distinguish between the effects of loan amount independent of sequence length.

VII.F.2 noting that the evidence on the impacts of the availability of payday loans on consumer welfare varies; that most studies focused on what happens when all access to payday loans is eliminated as opposed to restricted; and that within that body of literature studies have provided evidence that access to payday loans can have positive, negative, or no effects on various consumer outcomes. The Bureau's synopsis of the available evidence presented there (and above) is that access to payday loans may well be beneficial for those borrowers with discrete, short-term needs, but only if they are able to successfully avoid unanticipated long sequences of loans. The Bureau further concluded that the available evidence suggests that consumers who end up engaging in long sequences of reborrowing generally do not anticipate those outcomes *ex ante* [353] and that the 2017 Final Rule, on average (and taking into account potential alternatives to which consumers might turn if long sequences were proscribed), is welfare enhancing for such consumers.[354]

As this proposal's increase in access to credit is concentrated in long durations of indebtedness where the, albeit limited, evidence suggest the welfare impacts are negative on average, the estimated effect on average consumer surplus from these extended loan sequences would be negative relative to the chosen baseline.

Increased Defaults and Delinquencies. Default rates on payday loans prior to the 2017 Final Rule were fairly low when calculated on a per loan basis (two percent in the data the Bureau analyzed).[355] A potentially more meaningful measure of the frequency with which consumers experience default is therefore the share of loan sequences that end in default—including single-loan sequences where the consumer immediately defaults and multi-loan sequences which end in default after one or more instances of reborrowing. The Bureau's data show that, using a 30-day sequence definition (*i.e.,* a loan taken within 30 days of paying off a prior loan is considered part of a sequence of borrowing), 20 percent of loan sequences ended in default prior to the 2017 Final Rule. Other researchers have found similar high levels of default. A study of payday borrowers in Texas found that 4.7 percent of loans were charged off but 30 percent of borrowers had a loan charged off in their first year of borrowing.[356] It is reasonable to assume a return to these market conditions under the proposal.

As previously discussed, the Bureau believes that some borrowers who would be able to reborrow the full amount of the initial loan under the proposal may avoid a default that would have occurred if lenders had to comply with the Mandatory Underwriting Provisions of the Rule. This would be the result for borrowers who would not have been able to successfully make the step-down payment on the principal step-down schedule, but could afford to pay just the fees, *i.e.,* the reborrowing cost, and then eventually repay the loan in full when they experience a positive income shock. This also would be the result for borrowers who are able to obtain an initial loan, cannot demonstrate an ability to repay when seeking to reborrow, but would in fact be able to repay after experiencing a positive income shock. However, the Bureau believes that some borrowers taking out payday loans may experience additional defaults under the proposal than they would under the 2017 Final Rule. This would occur in instances where the principal step-down requirement would have resulted in borrowers not reborrowing relatively larger amounts that could lead to an eventual default. As discussed in the 2017 Final Rule, the Bureau believes the consequences of defaults can be harmful to at least some consumers, or in specific circumstances. If this proposal were to increase defaults on net, this would represent a potential cost to consumers.[357] However, the Bureau does not know the prevalence of the possible increased defaults nor can it provide an estimate of the total potential cost per default to consumers.[358]

The source of those perceived default costs is unclear. Defaulting on a payday loan may initially appear to be relatively low cost for consumers, given that lenders generally do not report to the major credit bureaus and may not choose to pursue collection litigation if the amount owed is small. However, as lenders take a post-dated check (or account access) to secure the loan, and will seek to obtain payment by that method if the consumer fails to return to the store to repay (or reborrow), default can only occur when the consumer's account balance (inclusive of any overdraft buffer) has less than the amount owed. Default, as defined as a failed presentment of the post-dated check, therefore often results in NSF assessments. This could lead to negative balances and ultimately may lead or contribute to involuntary account closures which can decrease a consumer's access to checking accounts in the future. For example, in data analyzed by the Bureau, half of all identified online payday borrowers' accounts have at least one presentment from an online payday lender that results in overdraft or failure due to NSF during the 18-month observation period, resulting in an average of $185 in fees.[359] Note, however, there are many potential debits or attempted debits that can contribute to account closures, and the Bureau has not disentangled the effects of attempts to collect on payday loans from other potential contributing causes to account closures.

In addition to default costs resulting from lenders' access to consumers' checking accounts, the 2017 Final Rule also noted that borrowers who default may be subject to collection efforts which can take aggressive forms, including repeated phone calls, in-person visits to the consumer's home or workplace, and calls or visits to consumers' friends or relatives.[360]

Additionally, both the loss of the option value of future borrowing and non-pecuniary costs of failing to pay may add to the consumer's perception of the cost of default. The option value refers to the opportunity to borrow again in the future, at least from the specific lender, which is decreased after a default. This results in additional costs to the consumer in terms of decreased access to credit, or additional search beyond their preferred lender, that may, or may not, be accurately understood by

[353] See 82 FR 54472, 54568–70, 54816–17 (discussing the Bureau's analysis of certain data from the Mann Study including statistical evidence showing, in Professor Mann's words, ''that there is no significant relationship between the predicted number of days and the days to clearance''); *see also* Email from Ronald Mann, Professor, Columbia Law School to Jialian Wang and Jesse Leary, Bureau of Consumer Fin. Prot., (Sept. 24, 2013) (on file).

[354] For a discussion of alternative sources of credit, see 82 FR 54472, 54609–11, 54841.

[355] Default here is defined as a loan not being repaid as of the end of the period covered by the data or 30 days after the maturity date of the loan, whichever is later.

[356] Paige Marta Skiba & Jeremy Tobacman, *Payday Loans, Uncertainty, and Discounting: Explaining Patterns of Borrowing, Repayment, and Default,* at tbl. 2 (Vand. L. and Econ. Sch., Research Paper No. 08–33, 2008). Note that it may not be the case that all defaulted loans were charged off.

[357] For a more detailed discussion of the costs of defaults and delinquencies, as well as the reasoning behind their likely increased prevalence under this proposal, see 82 FR 54472, 54838.

[358] See Paige Marta Skiba & Jeremy Tobacman, *Payday Loans, Uncertainty, and Discounting: Explaining Patterns of Borrowing, Repayment, and Default* (Vand. L. and Econ. Sch., Research Paper No. 08–33, 2008) for a structural model examining reborrowing behavior including potential default costs.

[359] Bureau of Consumer Fin. Prot., *Online Payday Loan Payments* (Apr. 2016), *https://files.consumerfinance.gov/f/201604_cfpb_online-payday-loan-payments.pdf.*

[360] 82 FR 54472, 54574.

the consumer at the time of initial borrowing. Default may also impose non-pecuniary costs, such as the loss of access to the borrower's preferred lender. The Bureau seeks additional information on the expected change in the prevalence of default and the costs associated therewith.

For borrowers who would take out short-term vehicle title loans under the proposal, the impacts would be greater. As previously noted, the 2017 Final Rule will end virtually all such lending. Default rates on single-payment vehicle title loans are higher than those on payday loans. Additionally, as there will be a relatively greater increase in vehicle title loans compared to payday loans, the increase in defaults on vehicle title loans that would result from this proposal would be relatively larger compared to payday. In the data analyzed by the Bureau for the 2017 Final Rule, the default rate on all loans is nine percent, and the sequence-level default rate is 31 percent.[361] In the data the Bureau has analyzed, five percent of all single-payment vehicle title loans lead to repossession, and 18 percent of sequences of loans end with repossession. So, at the loan level and at the sequence level, slightly more than half of all defaults lead to repossession of the borrower's vehicle.

The range of potential ancillary impacts on a borrower of losing a vehicle to repossession depends on the transportation needs of the borrower's household and the available transportation alternatives. According to two surveys of vehicle title loan borrowers, 15 percent of all borrowers report that they would have no way to get to work or school if they lost their vehicle to repossession.[362] Fully 35 percent of borrowers pledge the title to the only working vehicle in the household.[363] Even those with a second vehicle or the ability to get rides from friends or take public transportation might experience inconvenience or even hardship from the loss of a vehicle. The Bureau seeks additional information on the prevalence and costs of the possible ancillary effects of repossession.

Similarly, to the extent the proposal would increase the number of payday and vehicle title loans and length of loan sequences relative to the 2017 Final Rule, the proposal likely would increase the frequency of delinquencies. Borrowers who become delinquent may incur penalty fees, late fees, or NSF fees, which can have associated indirect costs (*e.g.,* delinquencies on other bills, difficulty meeting their basic living expenses, etc.). Late payments on payday loans (defined as a payment that is sufficiently late that the lender deposits the borrower's check or attempts to collect using ACH authorization) appear to range from seven[364] to over 10 percent.[365] These late payments can be costly for borrowers. If a lender deposits a check or submits a payment request and it is returned for insufficient funds, the borrower's bank or credit union will likely charge the borrower an NSF fee of approximately $35, and the lender may charge a returned-item fee. It should be noted, however, that the harm from NSF will be mitigated by the limitations on payment practices and related notices, as required by the Payment Provisions described in the section-by-section analysis of the 2017 Final Rule. The Bureau does not know the total potential cost of potential increased delinquencies from the proposal, and it therefore seeks additional information about these costs.

c. New Evidence on the Benefits and Costs to Consumers of Access to Payday and Other Covered Short-Term and Longer-Term Balloon-Payment Loans

There have been several studies made available since the 2017 Final Rule that address the welfare effects of payday loans. As noted earlier, the evidence in these studies did not alter the Bureau's views based on earlier evidence; however, it is important to include these in this discussion of the evidence that bears on the benefits and costs of the proposal. The Bureau seeks comment on any additional relevant research, information, or data that has arisen since the 2017 Rule was published.

Studies of the Direct Effects of Payday Loans and Small Dollar Loan Regulations. As was the case with the studies described in the 2017 Final Rule, the new evidence about the benefits and costs of payday loans discussed here is not uniform in its welfare implications. Bronson and Smith (2018) surveyed 48 payday loan borrowers in Southeast Alabama to assess their satisfaction with payday loans.[366] The authors ask a limited number of questions, but find that 87.5 percent of respondents are ''extremely'' or ''very'' satisfied with payday loans on average, but that only 41.7 percent are ''extremely'' or ''very'' satisfied with their most recent loan.[367] They also show that 71 percent of payday borrowers, were they to not have access to a payday loan, would seek an alternative loan (*e.g.,* credit card, borrow from family or friend).[368] Finally, the authors show that fewer than 21 percent of respondents support limits on the number or dollar amount of loans available, and that none of the respondents support an outright ban of payday loans.[369] The authors note the limited scope of their study, which focuses on few customers in a very specific geographic region. Additionally, the methodology employed leads to a self-selected, likely non-representative sample of respondents, limiting the usefulness of these results for informing this analysis of benefits and costs.[370]

Lukongo and Miller (2017) found that Arkansas' binding interest rate cap creates additional costs for consumers of small-dollar installment products.[371] The authors show that Arkansas' interest rate cap did not decrease demand for small-dollar installment loans, noting that many Arkansans in

[361] There is also evidence that the default rates on longer-term balloon-payment title loans are high. The Bureau has data for a single lender that made longer-term vehicle title loans with both balloon and amortizing payment schedules. Those loans with balloon payments defaulted at a substantially higher rate. *See* Supplemental Findings at 30.

[362] Kathryn Fritzdixon et al., *Dude, Where's my Car Title?: The Law Behavior and Economics of Title Lending Markets,* 2014 U. Ill. L. Rev. 1013, 1038 (2014); Pew Charitable Trusts, *Auto Title Loans—Market practices and borrower experiences,* at 14, tbl. 3 (2015), *http://www.pewtrusts.org/~/media/assets/2015/03/autotitleloansreport.pdf.*

[363] Pew Charitable Trusts, *Auto Title Loans—Market practices and borrowers' experiences,* at 14 (2015), *http://www.pewtrusts.org/~/media/assets/2015/03/autotitleloansreport.pdf.*

[364] ''For the years ended December 31, 2011 and 2010, we deposited customer checks or presented an Automated Clearing House (ACH) authorization for approximately 6.7 percent and 6.5 percent, respectively, of all the customer checks and ACHs we received and we were unable to collect approximately 63 percent and 64 percent, respectively, of these deposited customer checks or presented ACHs. Total charge-offs, net of recoveries, for the years ended December 31, 2011 and 2010 were approximately $106.8 million and $108 million, respectively.'' Advance America, 2011 Annual Report (Form 10–K), at 27, *available at http://www.sec.gov/Archives/edgar/data/1299704/000104746912002758/a2208026z10-k.htm.*

[365] Paige Marta Skiba & Jeremy Tobacman, *Payday Loans, Uncertainty, and Discounting: Explaining Patterns of Borrowing, Repayment, and Default* (Vand. L. and Econ. Sch., Research Paper No. 08–33) (2008).

[366] Christy A. Bronson & Daniel J. Smith, *Swindled or Served?: A Survey of Payday Lending Customers in Southeast Alabama,* 40 S. Bus. & Econ. J. 16 (2017).

[367] *Id.* at 22–23.

[368] *Id.* at 25.

[369] *Id.* at 23–24.

[370] Respondents were solicited by surveyors standing in public places who asked if the respondent had taken a payday loan and was willing to complete a survey. No validation of actual experience with payday loans was attempted for respondents, let alone non-respondents.

[371] Onyumbe Enumbe Lukongo & Thomas W. Miller, *Adverse Consequences of the Binding Constitutional Interest Rate Cap in the State of Arkansas* (Mercatus Working Paper, 2017), *https://www.mercatus.org/system/files/lukongo_wp_mercatus_v1.pdf.*

counties adjacent to States allowing these loans take small-dollar installment loans. The authors also document an ''installment loan credit desert'' in the interior of Arkansas (noting that nearly 97 percent of Arkansans holding these loans reside in perimeter counties), and that transportation costs increase the effective APR for those borrowers who are able to travel in order to obtain such loans. While not directly related to payday (small-dollar installment loans have a different structure that is not affected by the 2017 Final Rule or this proposal), this study documents that demand for credit is not eliminated by restrictions on the supply of that credit, and that customers in border counties are better able to travel across State lines to obtain loans, and do so with some frequency.

Ramirez (2017) shows that when Ohio constrained interest rates on payday loans in 2008, licenses for pawn brokers, precious metal buyers, alternative small-loan, and second-mortgage lending increased.[372] The author concludes that demand for the credit previously satisfied by payday loans persisted after the reducing in the availability of those loans, and that supply-side effects evolved in order to partially meet this demand. The author's implication is that these alternatives to payday loans are substitutes (though likely imperfect ones). The Bureau notes there may be other likely imperfect substitutes for payday loans available to consumers, such as borrowing from relatives, decreasing expenses, borrowing from an unlicensed lender, but the Bureau does not have data concerning to what extent these alternatives are available and at what prices as well as the ancillary benefits and costs associated with these possible alternatives.

Studies Describing the Links Between Payday Loans and Health Issues. The 2017 Final Rule described in general terms that payday loan use could be associated with non-pecuniary benefits or costs, but did not present empirical evidence of these impacts.[373] A newer payday-related literature shows correlations between payday loan access or use and health outcomes.[374]

Cuffe and Gibbs (2017) explore the relationship between payday loan access and liquor sales.[375] The authors find a persistent reduction in liquor sales resulting from payday lending regulations that restricted access for frequent payday loan users. They also show that this decline in sales is nearly three times larger for liquor stores closest to payday lenders. Importantly, the authors also find no corresponding decline in overall expenditures from the restricted access to payday loans. The authors imply these finding could have public health impacts, though they do not provide estimates of these impacts, and the direction of any overall welfare impacts is not clear.[376]

Eisenberg-Guyot et al. (2018) assess the impact of ''fringe banking services'' on health outcomes.[377] Using Current Population Survey data and propensity score matching, the authors show ''fringe loan'' use is associated with 38 percent higher prevalence of reporting poor health. The authors imply that the magnitude suggests that at least some fringe loan use may cause a decline in perceived health. However, the authors do not compellingly address the possibility of reverse causality: *i.e.,* the possibility that individuals suffering (or reporting to suffer) poor health are more likely to use payday loans. Additionally, if payday borrowers affected by this proposal would be using other ''fringe loans'' absent the proposal, the proposal's increase in payday and vehicle title access would have no effect on their health.

Sweet et al. (2018) use data from a small, non-random survey of debt and health to test whether short-term loans are associated with emotional and physical health indicators.[378] They find that having ever used a short-term loan is associated with a number of risk factors, including poor physical health and anxiety, even after controlling for several socio-demographic covariates. However, the survey used is small (n=286), they do not distinguish between types of loans, frequency of use, or when a loan was used, and their sample comes from one metropolitan statistical area (MSA) in a State with an interest rate cap that does not allow for traditional payday lending (Boston, MA).

In the only study regarding health effects of payday loan access using a causal identification strategy, Lee (2017) explores the link between payday loans and household welfare by estimating the impact of payday loan access on an extreme measure of household distress: Suicide.[379] The author uses a distance to border and difference-in-difference identification approach to provide evidence consistent with payday loans increasing the risk of suicide attempts for low- and moderate-income borrowers and employed workers. The author also shows that completed suicides increase by relatively more than attempts. The estimated magnitudes are quite high. Notably, the author does not estimate whether the increase in suicide risk associated with initial access to payday loans is reversed (or possibly even exacerbated) by the removal of some of that access and as such, the implication for this proposal's effective reinstatement of access to more borrowing is unclear.

Studies Describing the Links Between Financial Education and Payday Loan Use. An expanding literature deals with the impact of financial education and literacy on the use of payday loans.

For example, Harvey (2017) shows that financial education mandates significantly reduce the likelihood and frequency of payday borrowing.[380] Specifically, the author finds that individuals who were mandated to take personal finance classes in high school are less likely to have used payday loans, and used fewer payday loans compared to those individuals who did not have a mandated personal finance class. Kim and Lee (2017) explore whether financial literacy impacts payday loan use and find, using the 2012 National Financial Capability Study, that increased financial literacy is negatively associated with payday loan use.[381] In slight contrast, Alyousif and Kalenkoski (2017) use a self-selected sample to find that seeking financial advice about savings and investment is associated with less

[372] Stefanie Ramirez, *Payday-Loan Bans: Evidence of Indirect Effects on Supply* (SSRN Working Paper, 2017).

[373] The Bureau was aware of at least one of these papers prior to the 2017 Final Rule. At the time, the paper was a working paper with preliminary results. As such, the Bureau chose not to discuss its findings in the 2017 Final Rule.

[374] However, the Bureau underscores that correlation between two variables does not necessarily imply causation, specifically, that payday loan access or use is the cause of these health outcomes.

[375] Harold E. Cuffe & Christopher G. Gibbs, *The Effect of Payday Lending Restrictions on Liquor Sales,* 85(1) J. Banking & Fin. 132–45 (2017).

[376] The authors also note specific behavioral biases with which their findings are consistent. However, they are unable to test for any specific biases that actually are at play. As such, the Bureau's analysis is not informed by this aspect of the paper.

[377] Jerzy Eisenberg-Guyot et al., *From Payday Loans To Pawnshops: Fringe Banking, The Unbanked, And Health,* 37(3) Health Aff. 429 (2018).

[378] Elizabeth Sweet et al., *Short-term lending: Payday loans as risk factors for anxiety, inflammation and poor health,* 5 SSM—Population Health, 114–121 (2018), *https://doi.org/10.1016/j.ssmph.2018.05.009.*

[379] Jaeyoon Lee, *Credit Access and Household Welfare: Evidence From Payday Lending* (SSRN Working Paper, 2017).

[380] Melody Harvey, *Impact of Financial Education Mandates on Younger Consumers' Use of Alternative Financial Services* (SSRN Working Paper, 2017).

[381] Kyoung Tae Kim and Jonghee Lee, *Financial literacy and use of payday loans in the United States,* 25(11) Applied Econ. Letters 781 (2017).

payday loan use, but that seeking debt counseling is correlated with a higher chance of payday loan use.[382]

While the relationship between financial education and literacy and payday loan use has only indirect implications for the impacts of payday loan use on consumers, the apparent finding that consumers with greater financial education and literacy use payday loans less may imply that the use of these loans is at least somewhat driven by the information consumers have about these loans. This, in turn, could have implications for the consumer surplus that would result from use of these loans. But perhaps the more direct implication is that improved financial education programs and opportunities could be a viable alternative to more direct market interventions such as issuing regulations.

Summary of Research Findings on the Welfare Effects of Consumers of Payday Loan Use. The Bureau believes the new research described here supplements, and does not contradict, the research described in the 2017 Final Rule. The Bureau welcomes comment on these new studies and other new research concerning the effect on consumers from using payday loans.

C. Potential Benefits and Costs of the Proposal to Consumers and Covered Persons—Recordkeeping Requirements

The 2017 Final Rule requires lenders to maintain sufficient records to demonstrate compliance with the Rule. Those requirements include, among other records to be kept, loan records; materials collected during the process of originating loans, including the information used to determine whether a borrower had the ability to repay the loan, if applicable; records of reporting loan information to RISes, as required; and records of attempts to withdraw payments from borrowers' accounts, and the outcomes of those attempts. The Bureau's proposed revocation of the Mandatory Underwriting Provisions would eliminate the recordkeeping requirements set forth in the 2017 Final Rule that are not related to payment withdrawal attempts.

1. Benefits and Costs to Covered Persons

The Bureau estimated in the 2017 Final Rule that the costs associated with electronic storage of records was small. As such, the Bureau estimates the benefits from avoiding these costs under the proposal to be small as well. Specifically, the Bureau estimates the benefits to be less than $50 per lender if they purchased additional storage themselves (*e.g.,* a portable hard drive) to comply with the 2017 Final Rule, or $10 per month if they leased storage (*e.g.,* from one of the many online cloud storage vendors). Lenders would also avoid the need to develop procedures and train staff to retain records under this proposal; these benefits are included in earlier estimates of the benefits of no longer needing to develop procedures, upgrade systems, and train staff.

2. Benefits and Costs to Consumers

Consumers will be minimally affected by the proposed revocation of mandatory underwriting-related recordkeeping requirements.

D. Potential Benefits and Costs of the Proposal to Consumers and Covered Persons—Requirements Related to Information Furnishing and Registered Information Systems

As discussed above, the 2017 Final Rule requires lenders to report covered short-term and longer-term balloon-payment loans to every RIS. This requirement would be eliminated by this proposal, as would the potential benefits and costs from the existence of, and reporting to, every RIS.

1. Benefits and Costs to Covered Persons

The proposal, if adopted, would eliminate the benefits, described in the 2017 Final Rule, that are afforded to firms that apply to become RISes by eliminating the requirement on lenders to furnish information regarding covered short-term and longer-term balloon-payment loans to every RIS and to obtain a consumer report from at least one RIS before originating such loans.

The proposal, if adopted, would also eliminate the benefits to lenders from access to RISes described in the 2017 Final Rule. Most of these benefits would result from decreased fraud and increased transparency. These benefits include, *inter alia,* easier identification of borrowers with past defaults on payday loans issued by other lenders, avoiding issuing loans to borrowers who currently have outstanding loans from other lenders, etc. This proposal's elimination of these benefits would represent a cost to lenders.

2. Benefits and Costs to Consumers

The proposed elimination of the RIS-related requirements would have minimal impact on consumers. The largest benefit for consumers from the RIS-related provisions, as noted in the 2017 Final Rule, was compliance by lenders with the underwriting requirements of the Rule. This benefit would be moot, given the proposed revocation of the Rule's Mandatory Underwriting Provisions. The remaining benefits this proposal would eliminate are small.

E. Other Unquantified Benefits and Costs

Some of the proposal's impacts noted above are difficult if not impossible to quantify, because their magnitudes or values are unknown or unknowable. One of the most notable of these is the consumer welfare impact of increased access to short-term vehicle title loans. While the structure of these loans is somewhat similar to payday loans, there are no direct studies of the impact of these loans on consumer welfare. Additionally, there is no obvious way to sign or scale the welfare effects of access to vehicle title loans relative to payday loans. For example, it is possible that the larger loan amounts available from vehicle title lenders enable consumers to better handle more substantial financial shocks and that the risk of losing a vehicle in the event of default provides consumers with greater incentives to become more fully informed before initiating loans. This would result in relatively more positive welfare effects relative to payday loans. However, it is also possible that the larger loan amounts may result in more repossessions after defaults that may have additional adverse consequences for some consumers. If this possibility were the reality, the welfare effects of the proposal would be more negative for vehicle title consumers than for payday consumers. However, within the set of 17 States that permit short-term vehicle title lending, 12 also permit longer-term lending;[383] so the substitution of longer-term lending for short-term lending has significant potential to mitigate the negative welfare impacts of the proposal. Absent reliable evidence about the welfare effects of access to short-term vehicle title loans, the Bureau does not attempt to quantify these effects here.

There are other, less direct effects of the proposal that are also left unquantified. These impacts include (but are not limited to): Intrinsic utility (''warm glow'') from access to loans that are not available under the 2017 Final Rule; innovative regulatory approaches by States that would have been

[382] Maher Alyousif & Charlene M. Kalenkoski, *Asking for Action: Does Financial Advice Improve Financial Behaviors?* (SSRN Working Paper, 2017).

[383] One of the States that only allows short-term vehicle title lending is Ohio, but recent legislation will eliminate such lending in April 2019. Note that an additional 6 States only allow longer-term vehicle title lending, and those would be unaffected by this proposal.

discouraged by the 2017 Final Rule; public and private health costs that may (or may not) result from payday loan use; suicide-related costs that may (or may not) result from increased access to loans; changes to the profitability and industry structure in response to the 2017 Final Rule (*e.g.,* industry consolidation that may create scale efficiencies, movement to installment product offerings) that would not occur under the proposal; concerns about regulatory uncertainty and/or inconsistent regulatory regimes across markets; benefits or costs to outside parties associated with the change in access to payday loans (*e.g.,* revenues of providers of payday substitutes like pawnshops, overdraft fees paid by consumers and received by financial institutions, the cost of late fees and unpaid bills, etc.); indirect costs arising from increased repossessions of vehicles in response to non-payment of title loans; non-pecuniary effects associated with financial stress that may be alleviated or exacerbated by increased access to/use of payday loans; and any impacts on lenders of fraud and opacity related to a lack of industry-wide RISes (*e.g.,* borrowers circumventing lender policies against taking multiple concurrent payday loans, lenders having more difficulty identifying chronic defaulters, etc.). If there exist credible quantitative estimates of these impacts, the Bureau welcomes comments providing those estimates.

F. Potential Impact on Depository Creditors With $10 Billion or Less in Total Assets

The Bureau believes that depository institutions and credit unions with less than $10 billion in assets are minimally constrained by the 2017 Final Rule's Mandatory Underwriting Provisions. To the limited extent depository institutions and credit unions did make loans in this market, many of those loans were conditionally exempted from the 2017 Final Rule under § 1041.3(e) or (f) as alternative or accommodation loans. As such, this proposal would have minimal impact on these institutions.

However, it is possible that the removal of the 2017 Final Rule's restrictions would allow depository institutions and credit unions with less than $10 billion in assets to develop products that are not viable under the 2017 Final Rule (subject to applicable Federal and State laws and under the supervision of their prudential regulators).[384] To the extent these products are developed and successfully marketed, they would represent a benefit of this proposal for these institutions.

G. Potential Impact on Consumers in Rural Areas

Under the proposal, consumers in rural areas would have a greater increase in the availability of covered short-term and longer-term balloon-payment loans originated through storefronts relative to consumers living in non-rural areas. As described above, the Bureau estimates that removing the restrictions in the 2017 Final Rule on making these loans would likely lead to a substantial increase in the markets for storefront payday loans and storefront single-payment vehicle title loans. In the 2017 Final Rule, the Bureau analyzed how the adoption of State laws restricting payday lending in Colorado, Virginia, and Washington led to significant contraction in the number of payday stores. In those States, nearly all borrowers living in non-rural areas (MSAs) still had access to a bricks-and-mortar payday store. However, the Bureau noted that a substantial minority of borrowers living outside of MSAs no longer had a payday store readily available following the contraction in the industry. In Colorado, Virginia, and Washington, 37 percent, 13 percent, and 30 percent of borrowers, respectively, would need to travel at least five additional miles to reach a store that remained open. In Virginia, almost all borrowers had a store that remained open within 20 miles of their previous store. And, in Washington 9 percent of borrowers would have to travel at least 20 additional miles.[385]

While many borrowers who live outside of MSAs do travel that far to take out a payday loan, many do not. As such, the expected increase in bricks-and-mortar stores that would result from this proposal should improve access to storefront payday loans for those borrowers unwilling or unable to travel greater distances for these loans. While rural borrowers for whom visiting a storefront payday lender is impracticable under the 2017 Final Rule retain the option to seek covered short-term or longer-term balloon-payment loans from online lenders, restrictions imposed by State and local law may not allow this in some jurisdictions. Additionally, not all of these would-be borrowers necessarily have access to the internet, a necessity in order to originate online loans.[386] For those consumers who are unable or unwilling to seek loans from an online lender, the proposal would provide more, and potentially more desirable, borrowing options.

The Bureau expects that the relative impacts on rural and non-rural consumers of vehicle title loans would be similar to what would occur in the payday market. That is, rural consumers would be likely to experience a greater increase in the physical availability of single-payment vehicle title loans made through storefronts than borrowers living in non-rural areas.

Finally, the Bureau notes that it received a number of comments on the 2016 Proposal indicating that some online payday lenders operate in rural areas and comprise large shares of their local economies. Given that the proposal would allow these lenders to operate at their pre-2017 Final Rule capacities, it is likely that at least some rural lenders would be substantially and positively impacted by the proposal, benefiting their local economies.

Given the available evidence, the Bureau believes that, other than the relatively greater increase in the physical availability of covered short-term loans made through storefronts, consumers living in rural areas would not experience substantially different effects of the proposal than other consumers.[387]

IX. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act[388] as amended by the Small Business

[384] As discussed previously, this may be even more likely than it would have been at the time the 2017 Final Rule was drafted. The OCC not only rescinded guidance on deposit advance products, but has also encouraged banks to explore additional small-dollar installment lending products. Additionally, the FDIC is seeking comment on small-dollar products that its banks could offer. These factors might allow for additional lending if not for the 2017 Final Rule (*e.g.,* some additional product offerings may result from this proposal that would have been inviable under the 2017 Final Rule).

[385] 82 FR 54472, 54853.

[386] In considering this in the 2017 Final Rule, the Bureau noted that ''rural populations are less likely to have access to high-speed broadband compared to the overall population,'' but that ''the bandwidth and speed required to access an online payday lender is minimal,'' and that ''most potential borrowers in rural communities will likely be able to access the internet by some means (*e.g.,* dial up, or access at the public library or school).'' 82 FR 54472, 54853. However, there are likely to be at least some rural borrowers that were displaced from the market by the 2017 Final Rule.

[387] In the 2017 Final Rule, the Bureau noted the potential for small effects on a few local labor markets in which online lenders comprise a significant share of employment. 82 FR 54472, 54853. Corresponding effects may result from this proposal as well. However, the specifics of these impacts would depend on the competitive characteristics of these labor markets (both as they currently exist and in the counterfactual) that are not easily discernable or generalizable, and are of a second-order concern relative to the more direct impacts noted above.

[388] Public Law 96–354, 94 Stat. 1164 (1980).

Regulatory Enforcement Fairness Act of 1996 [389] (RFA) requires each agency to consider the potential impact of its regulations on small entities, including small businesses, small governmental units, and small not-for-profit organizations.[390] The RFA defines a ''small business'' as a business that meets the size standard developed by the Small Business Administration pursuant to the Small Business Act.[391]

The RFA generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.[392] The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business representatives prior to proposing a rule for which an IRFA is required.[393]

As discussed above, this proposal would rescind the Mandatory Underwriting Provisions of the 2017 Final Rule. The section 1022(b)(2) analysis above describes how, if adopted, this proposal would reduce the costs and burdens on covered persons, including small entities, relative to a baseline where compliance with the 2017 Final Rule becomes mandatory. Additionally, the 2017 Final Rule's FRFA contains a discussion of the specific costs and burdens imposed by the 2017 Final Rule on small entities, including those imposed by the Mandatory Underwriting Provisions that this proposal would reverse.[394] In addition to the removal of costs and burdens, all operations under current law, as well as those that would be adopted if compliance with the Mandatory Underwriting Provisions becomes mandatory, would remain available to small entities should this proposal be adopted. Thus, a small entity that is in compliance with the law at such time when this proposal might be adopted would not need to take any additional action to remain in compliance. Based on these considerations, the proposed rule would not have a significant economic impact on any small entities.

Accordingly, the undersigned hereby certifies that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. Thus, neither an IRFA nor a small business review panel is required for this proposal. The Bureau requests comments on this analysis and any relevant data.

X. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA),[395] Federal agencies are generally required to seek Office of Management and Budget (OMB) approval for information collection requirements prior to implementation. Under the PRA, the Bureau may not conduct or sponsor and, notwithstanding any other provision of law, a person is not required to respond to an information collection unless the information collection displays a valid control number assigned by OMB. The collections of information related to the 2017 Final Rule were previously submitted to OMB in accordance with the PRA and assigned OMB Control Number 3170–0065 for tracking purposes, however this control number is not yet active as OMB has not approved these information collection requests. This proposed rule would substantially revise or remove several of the information collection requirements contained in the Rule and, as such, a new information collection request seeking a new OMB control number has been submitted to OMB for review under PRA Section 3507(d).

A revised Supporting Statement detailing the changes to the information collections and their effects on the Rule's overall burden will be made available for public comment on the electronic docket accompanying this proposed rule.

Comments are specifically 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 on these issues may be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Bureau of Consumer Financial Protection. Comments may also be sent to the addresses identified in the **ADDRESSES** section above. All comments will become a matter of public record.

List of Subjects in 12 CFR Part 1041

Banks, Banking, Consumer protection, Credit, Credit Unions, National banks, Reporting and recordkeeping requirements, Savings associations, Trade practices.

Authority and Issuance

For the reasons set forth above, the Bureau proposes to amend 12 CFR part 1041, as set forth below:

PART 1041—PAYDAY, VEHICLE TITLE, AND CERTAIN HIGH-COST INSTALLMENT LOANS

■ 1. The authority citation for part 1041 continues to read as follows:

Authority: 12 U.S.C. 5511, 5512, 5514(b), 5531(b), (c), and (d), 5532.

Subpart A—General

§ 1041.1 [Amended]

■ 2. Amend § 1041.1 by removing the last sentence of paragraph (b).

§ 1041.2 [Amended]

■ 3. Amend § 1041.2 by removing and reserving paragraphs (a)(14) and (19).

Subpart B—[Removed and Reserved]

■ 4. Remove and reserve subpart B, consisting of §§ 1041.4 through 1041.6.

■ 5. Revise the heading for subpart D to read as follows:

Subpart D—Recordkeeping, Anti-Evasion, and Severability

§§ 1041.10 and 1041.11 [Removed and Reserved]

■ 6. Remove and reserve §§ 1041.10 and 1041.11.

■ 7. Amend § 1041.12 by revising paragraph (b)(1) and removing and reserving paragraphs (b)(2) and (3) to read as follows:

§ 1041.12 Compliance program and record retention.

* * * * *

(b) * * *

(1) *Retention of loan agreement for covered loans.* To comply with the

[389] Public Law 104–21, section 241, 110 Stat. 847, 864–65 (1996).

[390] 5 U.S.C. 601 through 612. The term '' 'small organization' means any not-for-profit enterprise which is independently owned and operated and is not dominant in its field, unless an agency establishes [an alternative definition under notice and comment].'' 5 U.S.C. 601(4). The term '' 'small governmental jurisdiction' means governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand, unless an agency establishes [an alternative definition after notice and comment].'' 5 U.S.C. 601(5).

[391] 5 U.S.C. 601(3). The Bureau may establish an alternative definition after consulting with the SBA and providing an opportunity for public comment. *Id.*

[392] 5 U.S.C. 601 through 612.

[393] 5 U.S.C. 609.

[394] 82 FR 54472, 54853.

[395] 44 U.S.C. 3501 *et seq.*

requirements in this paragraph (b), a lender must retain or be able to reproduce an image of the loan agreement for each covered loan that the lender originates.

* * * * *

■ 8. In appendix A to part 1041, remove Model Forms A–1 and A–2 and add reserved Model Forms A–1 and A–2 and headings for Model Forms A–3 through A–5 and Model Clauses A–6 through A–8 to read as follows:

Appendix A to Part 1041—Model Forms

A–1 Model Form

[Reserved]

A–2 Model Form

[Reserved]

A–3 Model Form

* * * * *

A–4 Model Form

* * * * *

A–5 Model Form

* * * * *

A–6 Model Clause

* * * * *

A–7 Model Clause

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A–8 Model Clause

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■ 9. In supplement I to part 1041:

■ a. Under *Section 1041.2—Definitions,* revise *2(a)(5) Consummation* and remove *2(a)(19) Vehicle Security.*

■ b. Under *Section 1041.3—Scope of Coverage; Exclusions; Exemptions,* revise *3(e)(2) Borrowing History Condition* and *3(e)(3) Income Documentation Condition.*

■ c. Remove *Section 1041.4—Identification of Unfair and Abusive Practice, Section 1041.5—Ability-to-Repay Determination Required, Section 1041.6—Conditional Exemption for Certain Covered Short-Term Loans, Section 1041.10—Furnishing Information to Registered Information Systems,* and *Section 1041.11—Registered Information Systems.*

■ d. In *Section 1041.12—Compliance Program and Record Retention:*

■ i. Revise *12(a) Compliance Program* and *12(b) Record Retention.*

■ ii. Remove *12(b)(1) Retention of Loan Agreement and Documentation Obtained in Connection With Originating a Covered Short-Term or Covered Longer-Term Balloon-Payment Loan, 12(b)(2) Electronic Records in Tabular Format Regarding Origination Calculations and Determinations for a Covered Short-Term or Longer-Term Balloon-Payment Loan Under § 1041.5, 12(b)(3) Electronic Records in Tabular Format Regarding Type, Terms, and Performance of Covered Short-Term or Covered Longer-Term Balloon-Payment Loans,* and *Paragraph 12(b)(3)(iv).*

■ iii. Revise *12(b)(5) Electronic Records in Tabular Format Regarding Payment Practices for Covered Loans.*

The revisions read as follows:

Supplement I to Part 1041—Official Interpretations

Section 1041.2—Definitions

* * * * *

2(a)(5) Consummation

1. *New loan.* When a contractual obligation on the consumer's part is created is a matter to be determined under applicable law. A contractual commitment agreement, for example, that under applicable law binds the consumer to the loan terms would be consummation. Consummation, however, does not occur merely because the consumer has made some financial investment in the transaction (for example, by paying a non-refundable fee) unless applicable law holds otherwise.

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Section 1041.3—Scope of Coverage; Exclusions; Exemptions

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3(e) Alternative Loans

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3(e)(2) Borrowing History Condition

1. *Relevant records.* A lender may make an alternative covered loan under § 1041.3(e) only if the lender determines from its records that the consumer's borrowing history on alternative covered loans made under § 1041.3(e) meets the criteria set forth in § 1041.3(e)(2). The lender is not required to obtain information about a consumer's borrowing history from other persons, such as by obtaining a consumer report.

2. *Determining 180-day period.* For purposes of counting the number of loans made under § 1041.3(e)(2), the 180-day period begins on the date that is 180 days prior to the consummation date of the loan to be made under § 1041.3(e) and ends on the consummation date of such loan.

3. *Total number of loans made under § 1041.3(e)(2).* Section 1041.3(e)(2) excludes loans from the conditional exemption in § 1041.3(e) if the loan would result in the consumer being indebted on more than three outstanding loans made under § 1041.3(e) from the lender in any consecutive 180-day period. See § 1041.2(a)(17) for the definition of outstanding loan. Under § 1041.3(e)(2), the lender is required to determine from its records the consumer's borrowing history on alternative covered loans made under § 1041.3(e) by the lender. The lender must use this information about borrowing history to determine whether the loan would result in the consumer being indebted on more than three outstanding loans made under § 1041.3(e) from the lender in a consecutive 180-day period, determined in the manner described in comment 3(e)(2)–2. Section 1041.3(e) does not prevent lenders from making a covered loan subject to the requirements of this part.

4. *Example.* For example, assume that a lender seeks to make an alternative loan under § 1041.3(e) to a consumer and the loan does not qualify for the safe harbor under § 1041.3(e)(4). The lender checks its own records and determines that during the 180 days preceding the consummation date of the prospective loan, the consumer was indebted on two outstanding loans made under § 1041.3(e) from the lender. The loan, if made, would be the third loan made under § 1041.3(e) on which the consumer would be indebted during the 180-day period and, therefore, would be exempt from this part under § 1041.3(e). If, however, the lender determined that the consumer was indebted on three outstanding loans under § 1041.3(e) from the lender during the 180 days preceding the consummation date of the prospective loan, the condition in § 1041.3(e)(2) would not be satisfied and the loan would not be an alternative loan subject to the exemption under § 1041.3(e) but would instead be a covered loan subject to the requirements of this part.

3(e)(3) Income Documentation Condition

1. *General.* Section 1041.3(e)(3) requires lenders to maintain policies and procedures for documenting proof of recurring income and to comply with those policies and procedures when making alternative loans under § 1041.3(e). For the purposes of § 1041.3(e)(3), lenders may establish any procedure for documenting recurring income that satisfies the lender's own underwriting obligations. For example, lenders may choose to use the procedure contained in the National Credit Union Administration's guidance at 12 CFR 701.21(c)(7)(iii) on Payday Alternative Loan programs recommending that Federal credit unions document consumer income by obtaining two recent paycheck stubs.

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Section 1041.12—Compliance Program and Record Retention

12(a) Compliance Program

1. *General.* Section 1041.12(a) requires a lender making a covered loan to develop and follow written policies and procedures that are reasonably designed to ensure compliance with the applicable requirements in this part. These written policies and procedures must provide guidance to a lender's employees on how to comply with the requirements in this part. In particular, under § 1041.12(a), a lender must develop and follow detailed written policies and procedures reasonably designed to achieve compliance, as applicable, with the payments requirements in §§ 1041.8 and 1041.9. The provisions and commentary in each section listed above provide guidance on what specific directions and other information a lender must include in its written policies and procedures.

12(b) Record Retention

1. *General.* Section 1041.12(b) requires a lender to retain various categories of documentation and information concerning

payment practices in connection with covered loans. The items listed are non-exhaustive as to the records that may need to be retained as evidence of compliance with this part.

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12(b)(5) Electronic Records in Tabular Format Regarding Payment Practices for Covered Loans

1. *Electronic records in tabular format.* Section 1041.12(b)(5) requires a lender to retain records regarding payment practices in electronic, tabular format. Tabular format means a format in which the individual data elements comprising the record can be transmitted, analyzed, and processed by a computer program, such as a widely used spreadsheet or database program. Data formats for image reproductions, such as PDF, and document formats used by word processing programs are not tabular formats.

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Dated: February 6, 2019.

Kathleen L. Kraninger,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2019–01906 Filed 2–11–19; 4:15 pm]

BILLING CODE 4810–AM–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1041

[Docket No. CFPB–2019–0007]

RIN 3170–AA95

Payday, Vehicle Title, and Certain High-Cost Installment Loans; Delay of Compliance Date

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is proposing to delay the August 19, 2019 compliance date for the mandatory underwriting provisions of the regulation promulgated by the Bureau in November 2017 governing Payday, Vehicle Title, and Certain High-Cost Installment Loans (2017 Final Rule or Rule) by 15 months to November 19, 2020. This proposal is related to another proposal, published separately in this issue of the **Federal Register,** seeking comment on whether the Bureau should rescind the mandatory underwriting provisions of the 2017 Final Rule.

DATES: Comments must be received on or before March 18, 2019.

ADDRESSES: You may submit comments, identified by Docket No. CFPB–2019–0007 or RIN 3170–AA95, by any of the following methods:

- *Electronic: https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: 2019-NPRM-PaydayDelay@cfpb.gov.* Include Docket No. CFPB–2019–0007 or RIN 3170–AA95 in the subject line of the message.
- *Mail/Hand Delivery/Courier:* Comment Intake, Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552.

Instructions: The Bureau encourages the early submission of comments. All submissions should include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to *https://www.regulations.gov.* In addition, comments will be available for public inspection and copying at 1700 G Street NW, Washington, DC 20552, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning 202–435–7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Proprietary information or sensitive personal information, such as account numbers, Social Security numbers, or names of other individuals, should not be included. Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Eliott C. Ponte, Attorney-Advisor; Amy Durant, Lawrence Lee, or Adam Mayle, Counsels; or Kristine M. Andreassen, Senior Counsel, Office of Regulations, at 202–435–7700. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Summary of the Proposed Rule

On October 5, 2017, the Bureau issued the 2017 Final Rule establishing consumer protection regulations for payday loans, vehicle title loans, and certain high-cost installment loans, relying on authorities under Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).[1] The Rule was published in the **Federal Register** on November 17, 2017.[2] It became effective on January 16, 2018, although most provisions (12 CFR 1041.2 through 1041.10, 1041.12, and 1041.13) have a compliance date of August 19, 2019.[3] On January 16, 2018, the Bureau issued a statement announcing its intention to engage in rulemaking to reconsider the 2017 Final Rule.[4] A legal challenge to the Rule was filed on April 9, 2018 and is pending in the United States District Court for the Western District of Texas.[5] On October 26, 2018, the Bureau issued a subsequent statement announcing it expected to issue notices of proposed rulemaking (NPRMs) to reconsider certain provisions of the 2017 Final Rule and to address the Rule's compliance date.[6] This is the proposal that addresses the compliance date; the other proposal addressing reconsideration of certain provisions is published separately in this issue of the **Federal Register.**

The 2017 Final Rule addressed two discrete topics. First, the Rule contained a set of provisions with respect to the underwriting of covered short-term and longer-term balloon-payment loans, including payday and vehicle title loans, and related reporting and recordkeeping requirements.[7] These provisions are referred to herein as the ''Mandatory Underwriting Provisions'' of the 2017 Final Rule. Second, the Rule contained a set of provisions, applicable to the same set of loans and also to certain high-cost installment loans, establishing certain requirements and limitations with respect to attempts to withdraw payments from consumers' checking or other accounts.[8] These are referred to herein as the ''Payment Provisions'' of the 2017 Final Rule.

The Bureau is proposing in this NPRM to delay the August 19, 2019 compliance date for the 2017 Final Rule's Mandatory Underwriting Provisions—specifically, §§ 1041.4 through 1041.6, 1041.10, 1041.11, and

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[1] Public Law 111–203, 124 Stat. 1376 (2010).

[2] 82 FR 54472 (Nov. 17, 2017).

[3] *Id.* at 54814.

[4] Bureau of Consumer Fin. Prot., *Statement on Payday Rule* (Jan. 16, 2018), *https://www.consumerfinance.gov/about-us/newsroom/cfpb-statement-payday-rule/.*

[5] *Cmty. Fin. Serv. Ass'n of Am.* v. *Consumer Fin. Prot. Bureau,* No. 1:18–cv–295 (W.D. Tex.). On November 6, 2018, the Court issued an order staying the August 19, 2019 compliance date of the rule pending further order of the Court. *See id.,* ECF No. 53. The litigation is currently stayed. *See id.,* ECF No. 29.

[6] Bureau of Consumer Fin. Prot., *Public Statement Regarding Payday Rule Reconsideration and Delay of Compliance Date* (Oct. 26, 2018), *https://www.consumerfinance.gov/about-us/newsroom/public-statement-regarding-payday-rule-reconsideration-and-delay-compliance-date/.*

[7] 12 CFR 1041.4 through 1041.6, 1041.10, 1041.11, and portions of 1041.12.

[8] 12 CFR 1041.7 through 1041.9, and portions of 1041.12.

1041.12(b)(1)(i) through (iii) and (b)(2) and (3)—to November 19, 2020, for several reasons, each of which is discussed in more detail below. First, the Bureau is publishing separately in this issue of the **Federal Register** an NPRM that sets forth strong reasons for seeking comment on whether it should rescind the Mandatory Underwriting Provisions of the Rule (Reconsideration NPRM). The Bureau is concerned that if the August 19, 2019 compliance date for the Mandatory Underwriting Provisions is not delayed, industry participants will expend significant resources and incur significant costs in order to comply with the 2017 Final Rule, and industry participants could experience substantial revenue disruptions that could impact their ability to stay in business once the compliance date has passed. The Bureau is concerned about imposing such costs on industry participants by mandating compliance by August 19, 2019 with portions of the Rule that may ultimately be rescinded. Second, outreach to affected entities since the finalization of the 2017 Final Rule has brought to light certain potential obstacles to compliance that were not anticipated when the original compliance date was set. For example, several State laws applicable to payday or similar loans have been enacted subsequent to the 2017 Final Rule that have more immediate compliance dates. Some industry participants have indicated that, given time and resource constraints, their need to comply with these intervening State laws may impede their ability to comply with the 2017 Final Rule's Mandatory Underwriting Provisions by the August 19, 2019 compliance date. Similarly, industry participants have indicated that they need additional time to finish building out, or otherwise making investments in, technology and critical systems necessary to comply with the Mandatory Underwriting Provisions of the 2017 Final Rule.

The Bureau is thus proposing to delay the August 19, 2019 compliance date for the Mandatory Underwriting Provisions of the 2017 Final Rule by 15 months, to November 19, 2020, in order to permit an orderly conclusion to its separate rulemaking process to reconsider the Mandatory Underwriting Provisions of the 2017 Final Rule, and to account for potential implementation challenges that had not been anticipated at the time of the 2017 Final Rule.

II. Background

In the 2017 Final Rule, the Bureau established consumer protection regulations for payday loans, vehicle title loans, and certain high-cost installment loans. The Rule was published in the **Federal Register** on November 17, 2017. It became effective on January 16, 2018, although most provisions (§§ 1041.2 through 1041.10, 1041.12, and 1041.13) have a compliance date of August 19, 2019.

As mentioned above, the 2017 Final Rule addressed two discrete topics: The Mandatory Underwriting Provisions and the Payment Provisions. The Mandatory Underwriting Provisions identified as an unfair and abusive practice the making of certain short-term and longer-term balloon-payment loans without reasonably determining that consumers will have the ability to repay the loans according to their terms. The Mandatory Underwriting Provisions include two methods for compliance. Under one method, lenders making covered short-term and longer-term balloon-payment loans are required to, among other things, make a reasonable determination that the consumer would be able to make the payments on the loan and be able to meet the consumer's basic living expenses and other major financial obligations without needing to re-borrow over the ensuing 30 days; the Rule sets forth a number of specific requirements that a lender must satisfy in this regard.[9] Under the other method, lenders are allowed to make certain covered short-term loans without meeting all the specific underwriting criteria as long as the loan satisfies certain prescribed terms, the lender confirms that the consumer meets specified borrowing history conditions, and the lender provides required disclosures to the consumer.[10]

In general, under either approach, a lender must obtain and consider a consumer report from an information system registered with the Bureau before making a covered short-term or longer-term balloon-payment loan.[11] In addition, other portions of the Rule require lenders to furnish to provisionally registered and registered information systems [12] certain information concerning covered short-term and longer-term balloon-payment loans at loan consummation, during the period that the loan is an outstanding loan, and when the loan ceases to be an outstanding loan.[13]

The Payment Provisions of the Rule apply to a broader group of covered loans, which include covered short-term and longer-term balloon-payment loans as well as certain high-cost installment loans, establishing certain requirements and limitations with respect to attempts to withdraw payments from consumers' checking or other accounts. The Rule identifies as an unfair and abusive practice lenders' attempts to withdraw payment on these loans from consumers' accounts after two consecutive payment attempts have failed, unless the consumer provides a new and specific authorization to do so. The Rule also prescribes notices lenders must provide to consumers before attempting to withdraw payments from their accounts.

In addition, the Rule includes other generally applicable provisions such as definitions, exemptions, and requirements for compliance programs and record retention (with portions specific to the Mandatory Underwriting Provisions and to the Payment Provisions).

As noted above, on January 16, 2018, the Bureau issued a statement announcing its intention to engage in rulemaking to reconsider the 2017 Final Rule. In addition, the statement notified entities seeking to become registered information systems that the Bureau would entertain requests to waive entities' preliminary approval application deadline.[14] Since that time, the Bureau has issued several waivers and published copies of those waivers on its website.[15] As of January 30, 2019, there are no information systems registered with the Bureau.[16] On October 26, 2018, the Bureau issued a subsequent statement announcing that it expected to issue NPRMs to reconsider certain provisions of the 2017 Final Rule and to address the Rule's compliance date.

On April 9, 2018, a legal challenge to the 2017 Final Rule was filed in the

[9] 12 CFR 1041.5.

[10] 12 CFR 1041.6.

[11] 12 CFR 1041.5(c)(2)(ii)(B) and (d)(1), and 1041.6(a).

[12] The 2017 Final Rule bifurcated the process for registering information systems: the first phase for entities seeking preliminary registration prior to the August 19, 2019 compliance date; and the second phase for entities seeking provisional registration on or after the August 19, 2019 compliance date. An entity seeking preliminary registration under the first phase was required to submit to the Bureau an initial application for preliminary approval for registration by April 16, 2018. After receiving preliminary approval from the Bureau, the entity must submit its application for registration within 120 days from the date preliminary approval was granted. *See* 12 CFR 1041.11(c).

[13] *See* 12 CFR 1041.10(c).

[14] Bureau of Consumer Fin. Prot., *Statement on Payday Rule* (Jan. 16, 2018), *https://www.consumerfinance.gov/about-us/newsroom/cfpb-statement-payday-rule/.*

[15] *See* Bureau of Consumer Fin. Prot., *Payday, Vehicle Title, and Certain High-Cost Installment Loans Registered Information Systems registration program—Waiver requests and Bureau determinations, https://www.consumerfinance.gov/policy-compliance/guidance/payday-loans-registered-information-systems-registration-program/registered-information-systems/#waivers.*

[16] *See id.*

United States District Court for the Western District of Texas. On June 12, 2018, the court issued an order staying the litigation. On November 6, 2018, the court stayed the August 19, 2019 compliance date of the 2017 Final Rule until further order of the court.

III. Proposed Delay of Compliance Date for the Mandatory Underwriting Provisions

The Bureau is proposing in this NPRM to delay the August 19, 2019 compliance date for the 2017 Final Rule's Mandatory Underwriting Provisions—specifically, §§ 1041.4 through 1041.6, 1041.10, 1041.11, and 1041.12(b)(1)(i) through (iii) and (b)(2) and (3)—to November 19, 2020. The Bureau is proposing this compliance date delay for several reasons, as discussed in turn below.

First, the Bureau is proposing this compliance date delay because, as noted above, the Bureau is publishing separately in this issue of the **Federal Register** an NPRM seeking comment on whether it should rescind the Mandatory Underwriting Provisions of the 2017 Final Rule. The Bureau preliminarily believes that a compliance date delay is needed because, as described in more detail in the Reconsideration NPRM, the Bureau preliminarily believes there are strong reasons for rescinding the Mandatory Underwriting Provisions of the Rule. Delaying the August 19, 2019 compliance date for the Mandatory Underwriting Provisions would give the Bureau the opportunity to review comments on the Reconsideration NPRM and to make any changes to those provisions before affected entities bear additional costs to comply with and implement the Mandatory Underwriting Provisions of the 2017 Final Rule. In addition, the Bureau is aware that some small lenders believe that the impacts of the Mandatory Underwriting Provisions of the 2017 Final Rule would significantly reduce the amount of revenue generated from their lending operations, and thereby cause some smaller industry participants to either temporarily or permanently exit the marketplace once compliance with the Mandatory Underwriting Provisions of the 2017 Final Rule is required. Other lenders have indicated that they will be forced to consolidate their operations or to make other fundamental changes to their business as a result of the Mandatory Underwriting Provisions. The Bureau preliminarily believes that delaying the August 19, 2019 compliance date would allow industry participants to avoid irreparable injury from the compliance and implementation costs and the market effects associated with preparing for and complying with portions of the Rule that the Bureau is proposing to rescind. The Bureau also believes that temporary industry disruptions may have negative impacts on consumers, including restricting consumer access to credit, and therefore preliminarily believes that delaying the August 19, 2019 compliance date would allow consumers to avoid injury from any such disruption.

Second, the Bureau has discussed implementation efforts with a number of industry participants since publication of the 2017 Final Rule, and through these conversations the Bureau has become aware of various unanticipated potential obstacles to compliance with the Mandatory Underwriting Provisions by the August 19, 2019 compliance date. The Bureau is seeking to better understand these obstacles and how they might bear on whether the Bureau should delay the August 19, 2019 compliance date for the Mandatory Underwriting Provisions while it considers whether to rescind those portions of the 2017 Final Rule.

For example, the Bureau is aware that several States have recently enacted laws applicable to loans subject to the 2017 Final Rule's Mandatory Underwriting Provisions. Some industry participants have told the Bureau that they are prioritizing developing compliance management systems in response to these laws that have, or will, become effective [17] before the August 19, 2019 compliance date. Some smaller industry participants have indicated to the Bureau that they do not have the resources to update or conform their compliance management systems to address both newly enacted State laws and the 2017 Final Rule at the same time. These recently enacted State laws were not anticipated in the 2017 Final Rule and therefore the effect these laws may have on affected entities' ability to comply with the Mandatory Underwriting Provisions of the 2017 Final Rule was not considered when the Bureau set the August 19, 2019 compliance date.

Similarly, industry participants have stated that the software vendors they use to produce technology and other critical systems necessary to comply with the Mandatory Underwriting Provisions requiring lenders to verify certain consumer obligations [18] will not be fully operational or available to industry before the August 19, 2019 compliance date. The Bureau has heard more recently that there are additional systems that would facilitate lenders' access to required information that have not progressed to the point necessary to permit lenders to meet the upcoming compliance date. For example, a storefront lender operating in multiple jurisdictions informed the Bureau that the process of overhauling its point-of-sale software has been delayed due to third-party vendors not being able to produce critical software components on schedule. Furthermore, it indicated that these third-party vendors have not been able to commit to developing and deploying this necessary software by the August 19, 2019 compliance date due to the complexity of various components required to ensure compliance. Even if these third-party vendors were able to develop this necessary software by the August 19, 2019 compliance date, the storefront lender explained that it would need at least several weeks to ensure the software works with its point-of-sale software and that the third-party vendor's software is in compliance with the 2017 Final Rule.

In light of the foregoing, the Bureau is proposing to delay the August 19, 2019 compliance date for the Mandatory Underwriting Provisions of the 2017 Final Rule to November 19, 2020. Specifically, as discussed further in part

[17] In Ohio (a state that permits payday lending), a bill signed into law by the governor in 2018 will, among other things, prohibit certain lenders from making loans of $5,000 or less secured by a vehicle title or any other collateral. Ohio lenders must comply with the law as of April 27, 2019. *See* Ohio Dep't of Commerce, *House Bill 123 Guidance* (2018), *https://www.com.ohio.gov/documents/fiin_HB123_Guidance.pdf; see also* Ohio House Bill 123, *An Act to Modify the Short-Term Loan Act, https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA132-HB-123.*

In Colorado, voters approved a ballot initiative on November 6, 2018 to cap annual percentage rates on payday loans at 36 percent. This initiative takes effect February 1, 2019. *See* Colo. Legislative Council Staff, *Initiative #126 Initial Fiscal Impact Statement, https://www.sos.state.co.us/pubs/elections/Initiatives/titleBoard/filings/2017-2018/126FiscalImpact.pdf; see also* Colo. Sec'y of State, *Official Certified Results—State Offices & Questions, https://results.enr.clarityelections.com/CO/91808/Web02-state.220747/#/c/C_2 (Proposition 111).*

In Florida, on March 19, 2018, the governor signed the Deferred Presentment Transactions Law (SB 920). This legislation will allow deferred-presentment (payday) installment loans of up to $1,000 paid back in installments of 60 to 90 days. Prior law allowed only amounts up to $500 paid off in a lump sum of 31 days. The new law will go into effect July 1, 2019. *See* Ch. 2018–26, Laws of Fla. (2018), *http://laws.flrules.org/files/Ch_2018_026.pdf.*

[18] For example, to verify a consumer's required payments under debt obligations, the lender must obtain and review (1) a national consumer report; (2) its own records and its affiliates' records; and (3) a consumer report obtained from an entity that has been registered with the Bureau as an information system under the Rule for 180 days or more pursuant to § 1041.11(c)(2) or (d)(1), or that is registered pursuant to § 1041.11(d)(2), if available. *See* 12 CFR 1041.5(c)(2)(ii)(B).

V below, the Bureau is proposing to delay the compliance date for §§ 1041.4 through 1041.6, 1041.10, 1041.11, and 1041.12(b)(1)(i) through (iii) and (b)(2) and (3) of the 2017 Final Rule. The Bureau is concerned that if the August 19, 2019 compliance date for the Mandatory Underwriting Provisions is not delayed, industry participants will expend additional resources and incur additional costs in order to comply with the 2017 Final Rule, and industry participants could experience revenue disruptions that could impact their ability to stay in business once the compliance date has passed. The Bureau is concerned about imposing such costs on industry participants by mandating compliance by August 19, 2019 with portions of the Rule that may ultimately be rescinded. The Bureau preliminarily believes, based on its experience writing the 2017 Final Rule and with other similar rulemakings, that the proposed compliance date of November 19, 2020 will allow the Bureau adequate opportunity to review comments on its Reconsideration NPRM regarding the Mandatory Underwriting Provisions of the 2017 Final Rule and to make any changes to those provisions before affected entities bear additional costs associated with implementing and complying with the 2017 Final Rule, and related market effects.

The Bureau solicits comment on whether it should delay the August 19, 2019 compliance date for the Mandatory Underwriting Provisions of the 2017 Final Rule, and, if so, whether the proposed November 19, 2020 compliance date is an appropriate length of time. In particular, the Bureau asks commenters to provide specific detail and any available data regarding implementation of the Mandatory Underwriting Provisions of the 2017 Final Rule and the specific challenges they face in doing so by the current compliance date of August 19, 2019, as well as relevant knowledge and specific facts about any benefits, costs, or other impacts of this proposal on industry, consumers, and other stakeholders. The Bureau also requests comment on whether it has identified the appropriate provisions of the 2017 Final Rule as constituting the Mandatory Underwriting Provisions for purposes of the proposed delay, and whether delaying the August 19, 2019 compliance date for these provisions would have any crossover effects on implementation of the Payment Provisions. In addition, the Bureau solicits comment on the potential consequences of not delaying the August 19, 2019 compliance date for the Mandatory Underwriting Provisions, as well as whether delaying the compliance date for the Mandatory Underwriting Provisions would better facilitate an orderly implementation period for the Rule. Finally, the Bureau solicits comment about the impact of the proposed delay on consumers who use payday loans, vehicle title loans, and high-cost installment loans covered by the 2017 Final Rule.

The purpose of this document is to seek comment on the Bureau's proposal to delay the August 19, 2019 compliance date for the Mandatory Underwriting Provisions. At this time, the Bureau is not proposing to delay the compliance date for the other provisions of the 2017 Final Rule, including the Payment Provisions. The Bureau notes that, through its efforts to monitor and support industry implementation of the 2017 Final Rule, it has heard concerns from some stakeholders regarding the Rule that are outside of the scope of this proposal. For example, the Bureau has received a rulemaking petition to exempt debit card payments from the Rule's Payment Provisions. The Bureau has also received informal requests related to various aspects of the Payment Provisions or the Rule as a whole, including requests to exempt certain types of lenders or loan products from the Rule's coverage and to delay the compliance date for the Payment Provisions. The Bureau intends to examine these issues and if the Bureau determines that further action is warranted, the Bureau will commence a separate rulemaking initiative (such as by issuing a request for information or an advance notice of proposed rulemaking).

IV. Legal Authority

The legal authority for the 2017 Final Rule is described in detail in part IV of the Supplementary Information accompanying the 2017 Final Rule.[19] Commenters may refer to that discussion for more information about the legal authority for this NPRM.

The Bureau adopted the Mandatory Underwriting Provisions of the 2017 Final Rule in principal reliance on the Bureau's authority under section 1031(b) of the Dodd-Frank Act to identify and prohibit unfair and abusive practices.[20] Accordingly, in proposing this rule, the Bureau is exercising its authority under Dodd-Frank Act section 1031(b) to prescribe rules under Title X of the Dodd-Frank Act.

In addition to section 1031 of the Dodd-Frank Act, the Bureau relied on other legal authorities for certain aspects of the Mandatory Underwriting Provisions in the 2017 Final Rule.[21] Section 1022(b)(3)(A) of the Dodd-Frank Act authorizes the Bureau, by rule, to conditionally or unconditionally exempt any class of covered persons, service providers, or consumer financial products or services from any rule issued under Title X, which includes a rule issued under section 1031, as the Bureau determines is necessary or appropriate to carry out the purposes and objectives of Title X.[22] The Bureau also relied, in adopting certain provisions, on its authority under section 1022(b)(1) of the Dodd-Frank Act to prescribe rules as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws.[23] The term Federal consumer financial law includes rules prescribed under Title X of the Dodd-Frank Act, including those prescribed under section 1031.[24] Additionally, in the 2017 Final Rule, the Bureau relied, for certain provisions, on other authorities, including those in sections 1021(c)(3), 1022(c)(7), 1024(b)(7), and 1032 of the Dodd-Frank Act.[25]

Section 1031 of the Dodd-Frank Act and each of the other legal authorities that the Bureau relied upon in the 2017 Final Rule provide the Bureau with discretion to issue rules and therefore discretion in setting compliance dates for those rules. In the 2017 Final Rule, the Bureau stated that the Rule's compliance date was ''structured to facilitate an orderly implementation process.'' [26] In particular, the Bureau sought ''to balance giving enough time for an orderly implementation period against the interest of enacting protections for consumers as soon as possible.'' [27] As discussed above and in the Reconsideration NPRM, the Bureau preliminarily believes that there are strong reasons for rescinding the Mandatory Underwriting Provisions of the Rule on the grounds, *inter alia,* that a more robust and reliable evidentiary

[19] 82 FR 54472, 54519–24.

[20] 12 U.S.C. 5531(b).

[21] *See* 82 FR 54472, 54522.

[22] 12 U.S.C. 5512(b)(3)(A).

[23] 12 U.S.C. 5512(b)(1). The Bureau also interprets section 1022(b)(1) of the Dodd-Frank Act as authorizing it to rescind or amend a previously issued rule if it determines such rule is not necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, including a rule issued to identify and prevent unfair, deceptive, or abusive acts or practices.

[24] 12 U.S.C. 5481(14).

[25] 12 U.S.C. 5511(c)(3), 12 U.S.C. 5512(c)(7), 12 U.S.C. 5514(b)(7), and 12 U.S.C. 5532.

[26] 82 FR 54472, 54474.

[27] *Id.* at 54814.

record is needed to support a rule that would have such dramatic impacts on the market, and that the findings of an unfair and abusive practice as set out in § 1041.4 of the 2017 Final Rule rested on applications of the relevant standards that the Bureau should no longer use. Accordingly, the Bureau preliminarily concludes that it should not assign the weight that it did in the 2017 Final Rule to ''the interest of enacting protections for consumers as soon as possible.'' As also discussed above, the Bureau has requested comment regarding whether delaying the August 19, 2019 compliance date would be consistent with an ''orderly implementation period,'' given that the Bureau may conclude that the Mandatory Underwriting Provisions should not be implemented and should instead be rescinded and because of the potential implementation issues discussed above. The Bureau is proposing to exercise its discretion to revise the August 19, 2019 compliance date in the manner described in this NPRM, in light of the considerations described above. The Bureau requests comment on those considerations and how they should be weighed in potentially delaying the August 19, 2019 compliance date for the Mandatory Underwriting Provisions of the Rule.

V. Provisions Affected by the Proposal

As discussed above, the 2017 Final Rule became effective on January 16, 2018, but has a compliance date of August 19, 2019 for §§ 1041.2 through 1041.10, 1041.12, and 1041.13. The Bureau is proposing to delay the August 19, 2019 compliance date to November 19, 2020 for §§ 1041.4 through 1041.6, 1041.10, 1041.11, and 1041.12(b)(1)(i) through (iii) and (b)(2) and (3). Sections 1041.4 through 1041.6 govern underwriting, with § 1041.4 identifying an unfair and abusive practice, § 1041.5 governing the ability-to-repay determination, and § 1041.6 providing a conditional exemption from §§ 1041.4 and 1041.5 for certain covered short-term loans. Section 1041.10 governs information furnishing requirements and § 1041.11 addresses registered information systems. Section 1041.12 sets forth compliance program and record retention requirements, with § 1041.12(b)(1)(i) through (iii) and (b)(2) and (3) detailing record retention requirements that are specific to the Rule's Mandatory Underwriting Provisions.

To implement the proposed compliance date delay, the Bureau would revise the few instances in the regulatory text and commentary where the August 19, 2019 compliance date appears. These portions of the regulatory text and commentary are generally related to the registered information system requirements in § 1041.11; namely, the Bureau would revise the regulatory text and headings in § 1041.11(c) introductory text, (c)(1) and (2), (d) introductory text, and (d)(1),[28] and related commentary, to replace August 19, 2019, where it appears, with the proposed compliance date of November 19, 2020. In addition, the Bureau requests comment on whether it should amend the Rule's regulatory text or commentary to expressly state the delayed compliance date for the Mandatory Underwriting Provisions and/or the unchanged date for the Payment Provisions.

VI. Compliance and Effective Dates

The Bureau is proposing to delay the August 19, 2019 compliance date for the Mandatory Underwriting Provisions of the 2017 Final Rule—specifically, §§ 1041.4 through 1041.6, 1041.10, 1041.11, and 1041.12(b)(1)(i) through (iii) and (b)(2) and (3)—to November 19, 2020. After considering comments received on this proposal, the Bureau intends to publish a final rule with respect to the delayed compliance date for the Mandatory Underwriting Provisions of the 2017 Final Rule, if warranted. Any final rule to delay the Rule's compliance date for the Mandatory Underwriting Provisions would be published and become effective prior to August 19, 2019. The Bureau seeks comment on this aspect of the proposal.

VII. Dodd-Frank Act Section 1022(b)(2) Analysis

A. Overview

As discussed above, this proposal would delay the August 19, 2019 compliance date for the Mandatory Underwriting Provisions of the 2017 Final Rule to November 19, 2020. Published separately in this issue of the **Federal Register** is the Reconsideration NPRM, in which the Bureau considers the impacts of rescinding the Mandatory Underwriting Provisions of the 2017 Final Rule. The analysis of the benefits and costs to consumers and covered persons required by section 1022(b)(2)(A) of the Dodd-Frank Act (also referred to as the ''section 1022(b)(2) analysis'') in part VIII of the Reconsideration NPRM outlines the one-time and ongoing benefits and costs of rescinding the 2017 Final Rule's Mandatory Underwriting Provisions. As this proposal to delay the August 19, 2019 compliance date would constitute a 15-month delay of the 2017 Final Rule's compliance date for the Mandatory Underwriting Provisions, its impacts if the Bureau were to issue a final rule with such a delay would be effectively 1.25 years of the annualized, ongoing impacts described in the Reconsideration NPRM. As described in the Reconsideration NPRM's section 1022(b)(2) analysis, these impacts are based on the analysis and conclusions reached in the 2017 Final Rule, and include increased loan volumes and revenues for lenders, increased access to credit for consumers, and a negative average welfare effect on consumers from exposure to unanticipated long sequences, all relative to the baseline if compliance becomes mandatory on August 19, 2019. This proposal's impacts on the one-time costs described in the 2017 Final Rule primarily include a delay before covered entities must bear these costs, until no later than the new compliance date. As some covered entities may have already started to incur some of these one-time costs and others may incur the costs in advance of the delayed compliance date, the Bureau believes the monetary impact of a delay of the Mandatory Underwriting Provisions would have minimal impacts on the eventual costs incurred by lenders if the Bureau decides to retain the Mandatory Underwriting Provisions.

In developing this proposal, the Bureau has considered the potential benefits, costs, and impacts as required by section 1022(b)(2)(A) of the Dodd-Frank Act.[29] Specifically, section 1022(b)(2)(A) of the Dodd-Frank Act calls for the Bureau to consider the potential benefits and costs of a regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services, the impact on depository institutions and credit unions with $10 billion or less in total assets as described in

[28] Section 1041.11(c)(1) allows the Bureau to preliminarily approve an entity as an information system before the compliance date of August 19, 2019. Section 1041.11(c)(2) allows the Bureau to approve the application from a preliminarily approved entity to become a registered information system prior to the compliance date of August 19, 2019.

The Bureau is not, however, proposing to change the April 16, 2018 date in § 1041.11(c)(3), which was the deadline to submit an application for preliminary approval for registration. As noted above, § 1041.11(c)(3)(iii) permits the Bureau to waive the application deadline on a case-by-case basis, and therefore the Bureau does not need to modify the existing April 16, 2018 preliminary approval date.

Section 1041.11(d)(1) sets forth the Bureau's process for approving and registering entities as information systems on or after the August 19, 2019 compliance date.

[29] 12 U.S.C. 5512(b)(2)(A).

section 1026 of the Dodd-Frank Act, and the impact on consumers in rural areas.

In advance of issuing this proposal, the Bureau has consulted with the prudential regulators and the Federal Trade Commission, including consultation regarding consistency with any prudential, market, or systemic objectives administered by such agencies.

The Bureau requests comment on the section 1022(b)(2) analysis that follows as well as submission of additional information that could inform the Bureau's consideration of the potential benefits, costs, and impacts of this proposal to delay the August 19, 2019 compliance date of the Mandatory Underwriting Provisions of the Rule. Comments on the Bureau's section 1022(b)(2) analysis related to this NPRM's proposed compliance date delay should be filed on the docket associated with this NPRM, while comments on the Reconsideration NPRM's section 1022(b)(2) analysis should be filed on the Reconsideration NPRM docket.

1. Description of the Baseline

In considering the potential benefits, costs, and impacts of this proposed rule the Bureau takes the 2017 Final Rule as the baseline, and considers economic attributes of the relevant markets as they are projected to exist under the 2017 Final Rule with its current August 19, 2019 compliance date and the existing legal and regulatory structures (*i.e.,* those that have been adopted or enacted, even if compliance is not currently required) applicable to providers. This is the same baseline used in the Reconsideration NPRM. See part VIII.A.4 of the Reconsideration NPRM for a more complete description of the baseline.

2. Need for Federal Regulation

The need for regulation here—*i.e.,* for a delay of the compliance date—is discussed in more detail above. In summary, first, the Bureau's Reconsideration NPRM, published separately in this issue of the **Federal Register**, sets forth the Bureau's reasons for preliminarily concluding that the Mandatory Underwriting Provisions of the 2017 Final Rule should be rescinded. The Bureau is concerned that if the August 19, 2019 compliance date for the Mandatory Underwriting Provisions is not delayed, firms will expend significant resources and incur significant costs to comply with portions of the 2017 Final Rule that ultimately may be—and which the Bureau preliminarily believes should be—rescinded. The Bureau is likewise concerned that once the August 19, 2019 compliance date has passed, firms could experience substantial revenue disruptions that could impact their ability to stay in business while the Bureau is deciding whether to issue a final rule rescinding the Mandatory Underwriting Provisions of the 2017 Final Rule. Second, as discussed above, outreach to firms since the finalization of the 2017 Final Rule has brought to light certain potential obstacles to compliance that were not anticipated when the original compliance date was set. For example, as discussed above, some firms have indicated that they need additional time to finish building out, or otherwise make investments in, technology and critical systems necessary to comply with the Mandatory Underwriting Provisions of the 2017 Final Rule.

B. Potential Benefits and Costs to Covered Persons and Consumers

The annualized quantifiable benefits and costs of rescinding the Mandatory Underwriting Provisions of the 2017 Final Rule are detailed in the section 1022(b)(2) analysis in part VIII.B through D of the Reconsideration NPRM. Under this proposal to delay the August 19, 2019 compliance date for the Mandatory Underwriting Provisions, these annualized benefits and costs would be realized for a period of 15 months (1.25 years). Additional, unquantified benefits and costs are also described in the Reconsideration NPRM's section 1022(b)(2) analysis. Under this proposal these costs and benefits would also be realized for 15 months (1.25 years).

1. Benefits to Covered Persons and Consumers

This proposal to delay the August 19, 2019 compliance date for the Mandatory Underwriting Provisions would delay by 15 months the restrictions on consumers' ability to choose to take out covered loans (including payday and vehicle title loans) that would be prohibited in the baseline. This proposal would also delay the decrease in the revenues of payday lenders anticipated in the 2017 Final Rule (62 to 68 percent) by 15 months, resulting in an estimated increase in revenues of between $4.25 billion and $4.5 billion (based on the annual rate of $3.4 billion and $3.6 billion) relative to the baseline. A similar delay in the reduction in the revenues of vehicle title lenders would result in an estimated increase in revenues relative to the baseline of between $4.9 billion and $5.1 billion (based on the annual rate of $3.9 billion to $4.1 billion).[30] The proposal would also cause a small but potentially quantifiable delay in the additional transportation costs borrowers would incur to get to lenders after the storefront closures expected in response to the 2017 Final Rule.

2. Costs to Covered Persons and Consumers

The Reconsideration NPRM's section 1022(b)(2) analysis also discusses the ongoing costs facing consumers that result from extended payday loan sequences at part VIII.B through D. The available evidence suggests that the Reconsideration NPRM would impose potential costs on consumers by increasing the risks of: Experiencing costs associated with extended sequences of payday loans and single-payment vehicle title loans; experiencing the costs (pecuniary and non-pecuniary) of delinquency and default on these loans; defaulting on other major financial obligations; and/or being unable to cover basic living expenses in order to pay off covered short-term and longer-term balloon-payment loans.[31] Relative to the baseline where the 2017 Final Rule's compliance date is unaltered, these costs would be maintained for 15 additional months under this proposal.

3. Other Benefits and Costs

Other benefits and costs that the Bureau did not quantify are discussed in the Reconsideration NPRM's section 1022(b)(2) analysis in part VIII.E. These include (but are not limited to): The consumer welfare impacts associated with increased access to vehicle title loans; intrinsic utility (''warm glow'') from access to loans that are not used (and that would not be available under the 2017 Final Rule); innovative regulatory approaches by States that would have been discouraged by the 2017 Final Rule; public and private health costs that may (or may not) result from payday loan use; changes to the profitability and industry structure that would have occurred in response to the 2017 Final Rule (*e.g.,* industry consolidation that may create scale efficiencies, movement to installment product offerings); concerns about

[30] These values are not discounted, as they would begin being realized immediately, and annualized discounting over such a small horizon would have a minimal impact.

[31] As mentioned in the Reconsideration NPRM's section 1022(b)(2) analysis, the effects associated with longer-term balloon-payment loans are likely to be small relative to the effects associated with short-term payday and vehicle title loans. This is because longer-term balloon-payment loans are uncommon in the baseline against which costs are measured.

regulatory uncertainty and/or inconsistent regulatory regimes across markets; benefits or costs to outside parties associated with the change in access to payday loans; indirect costs arising from increased repossessions of vehicles in response to non-payment of vehicle title loans; non-pecuniary costs associated with financial stress that may be alleviated or exacerbated by increased access to/use of payday loans; and any impacts of fraud perpetrated on lenders and opacity as to borrower behavior and history related to a lack of industry-wide registered information systems (*e.g.,* borrowers circumventing lender policies against taking multiple concurrent payday loans, lenders having more difficulty identifying chronic defaulters, etc.). Each of these impacts, discussed in the section 1022(b)(2) analysis for the 2017 Final Rule and the section 1022(b)(2) analysis of the Reconsideration NPRM, are expected to result from this proposal for the 15-month delay of the compliance date for the 2017 Final Rule's Mandatory Underwriting Provisions.

The Bureau does not believe the one-time benefits and costs described in the Reconsideration NPRM will be substantially affected by this proposal to delay the August 19, 2019 compliance date for the Mandatory Underwriting Provisions. In effect, this proposal would provide institutions greater flexibility in when and how to deal with the burdens of the 2017 Final Rule's Mandatory Underwriting Provisions if the Bureau retains those provisions in the Reconsideration rulemaking. Some firms may have already undertaken some of the compliance costs, meaning this proposal would have minimal impact on their benefits or costs. If the Bureau ultimately decides to finalize this proposed compliance date delay for the Mandatory Underwriting Provisions, others may use the additional time to install the necessary systems and processes to comply with the 2017 Final Rule in a more efficient manner. Quantifying the value of this more flexible timeline is impossible, as it depends on, among other things, each firm's idiosyncratic capacities and opportunity costs. However, it is likely that this flexibility will be of relatively greater benefit to smaller entities with more limited resources.

The Bureau expects, however, that, if the proposed compliance date delay for the Mandatory Underwriting Provisions is finalized, most firms will simply delay incurring some or all of the costs of coming into compliance. This period of time could vary depending on the length of the delay eventually finalized, if any. A delay of 15 months, as proposed, would effectively reduce the one-time benefits and costs by 1.25 years of their discount rate.[32] While these firms would experience potentially quantifiable benefits, the Bureau cannot know what proportion of the firms would adopt any of the strategies described above, let alone the discounting values or strategies unique to each firm. For a 15-month delay, the discounting of the one-time benefits and costs would be likely to be less than 3 percent of the value of those benefits and costs.[33] As such, the Bureau believes the one-time benefits and costs of this proposal are minimal, relative to the other benefits and costs described above.

C. Potential Impact on Depository Creditors With $10 Billion or Less in Total Assets

The Bureau believes that depository institutions and credit unions with less than $10 billion in assets were minimally constrained by the 2017 Final Rule's Mandatory Underwriting Provisions. To the limited extent depository institutions and credit unions do make loans in this market, many of those loans are conditionally exempt from the 2017 Final Rule under § 1041.3(e) or (f) as alternative or accommodation loans. As such, this proposal would likewise have minimal impact on these institutions.

The Reconsideration NPRM notes that it is possible that a revocation of the 2017 Final Rule's Mandatory Underwriting Provisions would allow depository institutions and credit unions with less than $10 billion in assets to develop products that would not be viable under the 2017 Final Rule (subject to applicable Federal and State laws and under the supervision of their prudential regulators). Given that development of these products has been underway, and takes a significant amount of time, and that this proposal's delay does not affect such products' longer-term viability, this proposal would have minimal effect on these products and institutions.

D. Potential Impact on Consumers in Rural Areas

The Bureau does not believe that the proposed compliance date delay would reduce consumer access to consumer financial products and services, and it may increase consumer access by delaying the point at which covered firms implement changes to comply with the 2017 Final Rule's Mandatory Underwriting Provisions. Under the proposal, consumers in rural areas would have a greater increase in the availability of covered short-term and longer-term balloon-payment loans originated through storefronts relative to consumers living in non-rural areas. As described in more detail in the Reconsideration NPRM's section 1022(b)(2) analysis, the Bureau estimates that removing the restrictions in the 2017 Final Rule on making these loans would likely lead to a substantial increase in the markets for storefront payday lenders and storefront single-payment vehicle title loans. By delaying the August 19, 2019 compliance date for the Mandatory Underwriting Provisions, the Bureau similarly anticipates a substantial increase in those markets relative to the baseline for the duration of the delay.

VIII. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act[34] as amended by the Small Business Regulatory Enforcement Fairness Act of 1996[35] (RFA) requires each agency to consider the potential impact of its regulations on small entities, including small businesses, small governmental units, and small not-for-profit organizations.[36] The RFA defines a ''small business'' as a business that meets the size standard developed by the Small Business Administration (SBA) pursuant to the Small Business Act.[37]

[32] Over and above this inflationary discounting, it is also possible that the proposed delay would result in a decrease in the nominal technology costs associated with compliance, as technology costs are generally declining. However, given the relatively short horizon and relatively mature technology required for compliance (*e.g.,* electronic storage, database management software, etc.), this decrease in nominal costs is expected to be minimal.

[33] The 3 percent value assumes a discounting of 2.40 percent (the Effective Federal Funds rate as of January 30, 2019) for 1.25 years. This implicitly assumes all firms would undertake the necessary actions immediately in the absence of this proposal, and would delay those actions for the full 15 months if the proposal were to be adopted. The true value will likely be substantially less than this, as many firms will not delay by the full duration, and/or have already undertaken the actions that will result in the benefits or costs.

[34] Public Law 96–354, 94 Stat. 1164 (1980).

[35] Public Law 104–21, section 241, 110 Stat. 847, 864–65 (1996).

[36] 5 U.S.C. 601 through 612. The term '' 'small organization' means any not-for-profit enterprise which is independently owned and operated and is not dominant in its field, unless an agency establishes [an alternative definition under notice and comment].'' 5 U.S.C. 601(4). The term '' 'small governmental jurisdiction' means governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand, unless an agency establishes [an alternative definition after notice and comment].'' 5 U.S.C. 601(5).

[37] 5 U.S.C. 601(3). The Bureau may establish an alternative definition after consulting with the SBA and providing an opportunity for public comment. *Id.*

The RFA generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule would not have a significant economic impact on a substantial number of small entities.[38] The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small entity representatives prior to proposing a rule for which an IRFA is required.[39]

As discussed above, the proposal would delay the August 19, 2019 compliance date for §§ 1041.4 through 1041.6, 1041.10, 1041.11, and 1041.12(b)(1)(i) through (iii) and (b)(2) and (3) of the 2017 Final Rule to November 19, 2020. The proposed delay in the compliance date would benefit small entities by providing additional flexibility with respect to the timing of the 2017 Final Rule's Mandatory Underwriting Provisions' implementation. In addition to generally providing increased flexibility, the delay in the compliance date would permit small entities to delay the commencement of any ongoing costs that result from complying with the Mandatory Underwriting Provisions of the 2017 Final Rule. Because small entities would retain the option of coming into compliance with the Mandatory Underwriting Provisions on the original August 19, 2019 compliance date, the proposed delay of the compliance date would not increase costs incurred by small entities relative to the baseline established by the 2017 Final Rule. Based on these considerations, the proposed rule would not have a significant economic impact on any small entities.

Accordingly, the undersigned hereby certifies that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. Thus, neither an IRFA nor a small business review panel is required for this proposal. The Bureau requests comments on this analysis and any relevant data.

IX. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA),[40] Federal agencies are generally required to seek Office of Management and Budget (OMB) approval for information collection requirements prior to implementation. Under the PRA, the Bureau may not conduct or sponsor and, notwithstanding any other provision of law, a person is not required to respond to an information collection unless the information collection displays a valid control number assigned by OMB. The collections of information related to the 2017 Final Rule were previously submitted to OMB in accordance with the PRA and assigned OMB Control Number 3170–0065 for tracking purposes, however, this control number is not yet active as OMB has not approved these information collection requests.

The Bureau has determined that the proposed rule would not impose any new recordkeeping, reporting, or disclosure requirements on members of the public that would constitute collections of information requiring approval under the PRA.

Dated: February 6, 2019.

Kathleen L. Kraninger,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2019–01905 Filed 2–11–19; 4:15 pm]

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[38] 5 U.S.C. 601 through 612.

[39] 5 U.S.C. 609.

[40] 44 U.S.C. 3501 *et seq.*

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