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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0735; Product Identifier 2018–NE–26–AD; Amendment 39–19599; AD 2019–06–01]

RIN 2120–AA64

Airworthiness Directives; International Aero Engines Turbofan Engines

Editorial Note: Rule document 2019–05582 was originally published on pages 11214 through 11216 in the issue of Tuesday, March 26, 2019. In that publication the AD number is incorrect on page 11215. The corrected document is republished in its entirety.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are superseding Airworthiness Directive (AD) 2018–24–01 for certain International Aero Engines (IAE) PW1133G–JM, PW1133GA–JM, PW1130G–JM, PW1127G–JM, PW1127GA–JM, PW1127G1–JM, PW1124G–JM, PW1124G1–JM, and PW1122G–JM turbofan engines. AD 2018–24–01 required removing certain low-pressure turbine (LPT) 1st- and 3rd-stage disks from service and replacing with a part eligible for installation. This AD retains the same requirements as AD 2018–24–01. This AD was prompted by the discovery of incorrect serial numbers in the identification of LPT disks in AD 2018–24–01. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective April 10, 2019.

We must receive any comments on this AD by May 10, 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:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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–2018–0735; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations (phone: 800–647–5527) is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Kevin M. Clark, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA, 01803; phone: 781–238–7088; fax: 781–238–7199; email: *kevin.m.clark@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

We issued AD 2018–24–01, Amendment 39–19505 (84 FR 2715, February 8, 2019), (''AD 2018–24–01''), for all IAE PW1133G–JM, PW1133GA–JM, PW1130G–JM, PW1127G–JM, PW1127GA–JM, PW1127G1–JM, PW1124G–JM, PW1124G1–JM, and PW1122G–JM turbofan engines with certain LPT 1st- and 3rd-stage disks installed. AD 2018–24–01 required removing certain LPT 1st- and 3rd-stage disks from service and replacing with a part eligible for installation. AD 2018–24–01 resulted from by a report of manufacturing defects found on delivered LPT 1st- and 3rd-stage disks. We issued AD 2018–24–01 to prevent failure of the LPT 1st- or 3rd-stage disk.

Actions Since AD 2018–24–01 Was Issued

Since we issued AD 2018–24–01, we learned of incorrect and omitted serial numbers for LPT 1st-stage and 3rd-stage disks in AD 2018–24–01. Two serial numbers, LLDLAJ4594 and LLDLAJ4595, were identified incorrectly, respectively, as LLDLAJ4494 and LLDLAJ4495 in Figure 1 to Paragraph (g) of AD 2018–24–01. In addition, one serial number, LLDLAJ6115, was included in the NPRM but inadvertently omitted from Figure 2 to Paragraph (g) of AD 2018–24–01. We are issuing this AD to address the unsafe condition on these products.

FAA's Determination

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

AD Requirements

This AD requires removing certain LPT 1st- and 3rd-stage disks from service and replacing with a part eligible for installation.

FAA's Justification and Determination of the Effective Date

No domestic operators use this product. Therefore, we find good cause that notice and opportunity for prior public comment are impracticable. In addition, for the reason stated above, we find that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments before it becomes effective. However, we invite you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2018–0735 and product identifier 2018–NE–26–AD at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this final rule. We will consider all comments received by the

closing date and may amend this final rule 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 final rule.

Costs of Compliance

We estimate that this AD affects 0 engines installed on airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Remove and replace LPT 1st- or 3rd-stage disk.	0 work-hours × $85 per hour = $0	$210,000	$210,000	$0

Authority for This Rulemaking

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

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

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to engines, propellers, and associated appliances to the Manager, Engine and Propeller Standards Branch, Policy and Innovation Division.

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) Amendment 39–19505 (84 FR 2715, February 8, 2019) and adding the following new AD:

2019–06–01 International Aero Engines: Amendment 39–19599; Docket No. FAA–2018–0735; Product Identifier 2018–NE–26–AD.

(a) Effective Date

This AD is effective April 10, 2019.

(b) Affected ADs

This AD replaces AD 2018–24–01, Amendment 39–19505 (84 FR 2715, February 8, 2019).

(c) Applicability

This AD applies to International Aero Engines (IAE) PW1133G–JM, PW1133GA–JM, PW1130G–JM, PW1127G–JM, PW1127GA–JM, PW1127G1–JM, PW1124G–JM, PW1124G1–JM, and PW1122G–JM turbofan engines with a low-pressure turbine (LPT) 3rd-stage disk with a serial number (S/N) listed in Figure 1 to paragraph (g) of this AD or an LPT 1st-stage disk with an S/N listed in Figure 2 to paragraph (g) of this AD, installed.

(d) Subject

Joint Aircraft System Component (JASC) Code 7250, Turbine Section.

(e) Unsafe Condition

This AD was prompted by a report of manufacturing defects found on delivered LPT 1st- and 3rd-stage disks. We are issuing this AD to prevent failure of the LPT 1st- or 3rd-stage disk. The unsafe condition, if not addressed, could result in uncontained LPT 1st- or 3rd-stage disk release, damage to the engine, and damage to the airplane.

(f) Compliance

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

(g) Required Actions

Remove from service the LPT 1st- and 3rd-stage disk within 30 days after the effective date of this AD, or as identified in paragraphs (g)(1) or (2) of this AD, whichever occurs later, and replace with a part eligible for installation.

(1) Remove the LPT 3rd-stage disk with an S/N listed in Figure 1 to paragraph (g) of this AD at the next piece-part exposure, not to exceed 4,800 cycles since new (CSN).

BILLING CODE 1301–00–P

Figure 1 to Paragraph (g) of this AD – S/Ns of LPT 3rd-stage disk

LLDLAJ4516
LLDLAJ4498
LLDLAJ4518
LLDLAJ4499
LLDLAJ4505
LLDLAJ4511
LLDLAJ4512
LLDLAJ4484
LLDLAJ4594
LLDLAJ4595
LLDLAJ4482
LLDLAJ4500

(2) Remove the LPT 1st-stage disk with an S/N listed in Figure 2 to paragraph (g) of this AD at the next piece-part exposure, not to exceed 2,240 CSN.

Figure 2 to Paragraph (g) of this AD – S/Ns of LPT 1st-stage disk

LLDLAJ6110
LLDLAJ6111
LLDLAJ6114
LLDLAJ6115

(h) Alternative Methods of Compliance (AMOCs)

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

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

(i) Related Information

For more information about this AD, contact Kevin M. Clark, Aerospace Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7088; fax: 781–238–7199; email: *kevin.m.clark@faa.gov.*

(j) Material Incorporated by Reference

None.

Issued in Burlington, Massachusetts, on March 19, 2019.

Karen M. Grant,

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

[FR Doc. R1–2019–05582 Filed 4–3–19; 8:45 am]

BILLING CODE 1301–00–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0924; Product Identifier 2018–NE–34–AD; Amendment 39–19600; AD 2019–06–02]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Division Turbofan Engines

Editorial Note: Rule document 2019–05708 was originally published on pages 11211 through 11214 in the issue of Tuesday, March 26, 2019. In that publication on page 11213 in paragraph (c) Applicability, the ''a'' and ''-3'' were inadvertently run together. The corrected document is republished in its entirety.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This AD is effective April 30, 2019.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 30, 2019.

ADDRESSES: For service information identified in this final rule, contact Pratt & Whitney, 400 Main Street, East Hartford, CT 06108; phone: 860–565–8770; fax: 860–565–4503. You may view this service information at the FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0924.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0924; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations (phone: 800–647–5527) is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

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

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain PW PW4158 turbofan engines. The NPRM published in the **Federal Register** on November 19, 2018 (83 FR 58199). The NPRM was prompted by several reports of HCF cracks found in the fuel nozzle supply manifold. The NPRM proposed to require replacement of the affected fuel nozzles and fuel nozzle manifold supply assemblies with parts eligible for installation. The NPRM also proposed to require installation of new brackets and clamps on the fuel nozzle supply manifold assemblies. We are issuing this AD to address the unsafe condition on these products.

Comments

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

Request To Use Overhauled Fuel Manifolds

United Parcel Service Co. (UPS) and Pratt & Whitney requested that the AD clarify that overhauled fuel manifolds that have had new tube details installed meet the intent of installing new fuel manifolds called for in Pratt & Whitney Service Bulletin (SB) PW4ENG 73–224, dated November 8, 2017. UPS and Pratt & Whitney noted that the equivalent Pratt & Whitney SB PW4G–100–73–48, Revision No. 1, dated April 24, 2018, for PW PW4000–100 engines, allows use of repaired manifolds.

We disagree because Pratt & Whitney SB PW4ENG 73–224, dated November 8, 2017, does not allow the installation of overhauled fuel manifolds with new tube details. We recommend that operators who would like to use overhauled manifolds submit an AMOC request.

Request To Clarify Applicability

SR Technics Switzerland Ltd. requested we clarify the identification of potentially affected engines since part number (P/N) 51J228 is a sales order option and does not appear in PW service bulletins. UPS recommended that we revise the applicability to refer to ''All Engines that incorporate Talon II Burner Sales Order Option P/N 51J228.'' The commenters indicated that P/N 51J228 is not listed in the applicable PW parts catalogue or in a service bulletin.

We partially agree. We agree to clarify the applicability of this AD. We disagree with referring to ''engines that incorporate Talon II Burner Sales Order Option P/N 51J228'' as this reference is not sufficiently clear to operators. We revised the Applicability of this AD to refer to the specifically affected engine serial numbers.

Request for Previous Credit

UPS requested that the rule include a ''Credits for Previous Actions'' section in this AD stating that affected engines that have fully incorporated prior revisions of both Pratt & Whitney SB PW4ENG 73–223, dated February 5, 2018, and Pratt & Whitney SB PW4ENG 73–224, dated November 8, 2017, may take credit for the required actions. UPS reasoned that PW is considering publishing a revision to Pratt & Whitney SB PW4ENG 73–224 that will allow use of overhauled fuel supply manifolds.

We disagree. We cannot give credit for previous action based on service bulletins that have not been published. We did not change this AD.

Request To Revise Compliance

UPS commented that paragraph (g)(1) in the NPRM only referred to P/N 51J344. UPS noted that there are other pre-SB 73–223 part numbers, such as P/N 51J235, that may be found installed in Talon II engines. UPS suggested that we revise the compliance paragraph (g)(1) in this AD to be similar to paragraph (g)(2) of this AD—for example, ''Replace the 24 fuel nozzles with part number 51J397 per Pratt & Whitney SB PW4ENG 73–223.''

We agree. Fuel nozzle designs other than P/N 51J397 are also susceptible to braze joint cracking. We revised paragraph (g)(1) of this AD based on the change suggested by the commenter.

Support for the AD

The Air Line Pilots Association International expressed support for the AD as written.

Conclusion

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

• Are consistent with the intent that was proposed in the NPRM for addressing the unsafe condition; and

• Do not add any additional burden upon the public than was already proposed in the NPRM.

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

Related Service Information Under 1 CFR Part 51

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

Other Related Service Information

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

Costs of Compliance

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

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

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

Authority for This Rulemaking

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

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

This AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to engines, propellers, and associated appliances to the Manager, Engine and Propeller Standards Branch, Policy and Innovation Division.

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2019–06–02 Pratt & Whitney Division: Amendment 39–19600; Docket No. FAA–2018–0924; Product Identifier 2018–NE–34–AD.

(a) Effective Date

This AD is effective April 30, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Pratt & Whitney Division PW4158 turbofan engines designated by a -3 on the Engine Data Plate and with the following engine serial numbers: 728534 to 728555; 728557 to 728585; 728587 to 728591; 728593; 728598; 729808 to 729824; or 729826 to 729864.

(d) Subject

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

(e) Unsafe Condition

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

result in engine fire, damage to the engine, and damage to the airplane.

(f) Compliance

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

(g) Required Actions

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

(1) Remove any of the 24 fuel nozzles, part number (P/N) 51J235 or 51J344, and replace with P/N 51J397.

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

(h) Definitions

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

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

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

(i) Alternative Methods of Compliance (AMOCs)

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

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

(j) Related Information

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

(k) Material Incorporated by Reference

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

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

(i) Pratt & Whitney Service Bulletin PW4ENG 73–224, dated November 8, 2017.

(ii) [Reserved]

(3) For Pratt & Whitney service information identified in this AD, contact Pratt & Whitney, 400 Main Street, East Hartford, CT 06108; phone: 860–565–8770; fax: 860–565–4503.

(4) You may view this service information at the FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759.

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

Issued in Burlington, Massachusetts, on March 19, 2019.

Karen M. Grant,

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

[FR Doc. R1–2019–05708 Filed 4–3–19; 8:45 am]

BILLING CODE 1301–00–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2018–0704; Product Identifier 2018–NM–066–AD; Amendment 39–19601; AD 2019–06–03]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Airbus SAS Model A330–200 Freighter, –200, and –300 series airplanes; and Airbus SAS Model A340–200, –300, –500, and –600 series airplanes. This AD was prompted by reports of depressurization of hydraulic reservoirs caused by air leakage from the pressure relief valve (PRV) of the hydraulic reservoir (HR) due to the extrusion of the O-ring seal from certain HR PRVs. This AD requires replacing affected PRVs and re-identifying affected HRs. We are issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective May 9, 2019.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of May 9, 2019.

ADDRESSES: For Airbus service information identified in this final rule, contact Airbus SAS, Airworthiness Office—EAL, Rond Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone: +33 5 61 93 36 96; fax: +33 5 61 93 45 80; email: *airworthiness.A330-A340@airbus.com*; internet *http://www.airbus.com.* For Safran service information identified in this final rule, contact Safran Aero Boosters, 121 Route de Liers, 4041 Milmort (Herstal), Belgium; telephone: +32 4 278 8111; fax: +32 4 278 52 07; internet *https://www.safran-aero-boosters.com,* or *https://www.safran-group.com/company/safran-aero-boosters.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA.

For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2018–0704.

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–2018–0704; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations (phone: 800–647–5527) is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax: 206–231–3229.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus SAS Model A330–200 Freighter, –200, and –300 series airplanes; and Airbus SAS Model A340–200, –300, –500, and –600 series airplanes. The NPRM published in the **Federal Register** on August 3, 2018 (83 FR 38088). The NPRM was prompted by reports of depressurization of HRs caused by air leakage from the PRV of the HR due to the extrusion of the O-

ring seal from certain HR PRVs. The NPRM proposed to require identifying the part number of the HR, and replacing and re-identifying affected HR PRVs. We are issuing this AD to address air leakage from the HR PRV, which could lead to the loss of one or more hydraulic systems, with the possible loss of control of the airplane.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2018–0064, dated March 23, 2018 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus SAS Model A330–200 Freighter, –200, and –300 series airplanes; and Airbus SAS Model A340–200, –300, –500, and –600 series airplanes. The MCAI states:

Some events of depressurisation of hydraulic reservoirs have been reported, due to air leakage from the HR PRV [hydraulic reservoir pressure relief valve]. The results of the investigations revealed that the air leakage was due to the extrusion of the O-ring seal from the HR PRV. This may have happened during HR maintenance, testing or during flight, if HR over-filling was performed, as a result of which hydraulic fluid could pass through the PRV, causing [the] PRV seal to migrate from its nominal position, leading to loss of HR pressurisation.

This condition, if not detected and corrected, could lead to the loss of one or more hydraulic systems, possibly resulting in loss of control of the aeroplane.

To address this potential unsafe condition, Airbus issued the AOT [Alert Operators Transmission (AOT) A29L005–16, dated June 28, 2016] to provide instructions to inspect the HR fluid level of each hydraulic circuit and to provide instructions for certain actions when servicing with hydraulic fluid is accomplished on an HR. Consequently, EASA published AD 2016–0107 [corresponding to FAA AD 2017–01–08, Amendment 39–18775 (82 FR 1593, January 6, 2017) (''2017–01–08'')] to require accomplishment of these actions for aeroplanes in service.

Since that [EASA] AD was issued, it was determined that the detected air leakage was due to the extrusion of the O-ring seal from a specific batch of HR PRV. Airbus published the applicable inspection SB [service bulletin] to inspect the HR of each hydraulic circuit and to provide instructions to identify the affected parts, and the Modification SB to provide instructions for replacement of each affected part fitted on an affected HR.

For the reasons described above, this [EASA] AD retains the requirements of EASA AD 2016–0107, which is superseded, and requires the [identification and] replacement [and re-identification] of the affected parts.

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–2018–0704.

Comments

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

Request To Clarify Definitions Section

Delta Air Lines (DAL) asked that certain language related to parts identified in paragraphs (g)(2) through (g)(4) of the proposed AD be clarified. DAL recommended that all PRVs having part number (P/N) 42F0026 and a serial number (S/N) identified in Safran Vendor Service Bulletin 42–29–005, Revision 01, dated September 26, 2017; and Safran Vendor Service Bulletin 42–29–006, Revision 01, dated September 27, 2017; be replaced with P/N 42F0029, or re-identified as P/N 42F0030, regardless of the HR they are installed on. DAL stated that the proposed AD does not adequately address PRVs having P/N 42F0026 listed in the referenced Safran service information, and installed on unaffected HRs. DAL added that it has had PRV and HR failures and has removed PRVs and HRs from other locations for replacement; therefore, an operator could do the proposed inspections and modification, but negate AD compliance by removing a PRV listed in the referenced Safran service information and installing it on an affected HR, or removing an HR and installing an affected HR on an airplane with a PRV listed in the referenced Safran service information.

We agree with the commenter's request to clarify certain language in paragraphs (g)(2) thorough (g)(4) of this AD for the reasons provided. Affected PRVs with a part number and serial number identified in Safran Vendor Service Bulletin 42–29–005, Revision 01, dated September 26, 2017; or Safran Vendor Service Bulletin 42–29–006, Revision 01, dated September 27, 2017; could be installed on an unaffected HR. Therefore, we have clarified the language in paragraphs (g)(2) thorough (g)(4) of this AD as suggested.

Request To Clarify Terminating Action

DAL asked that the terminating action specified in paragraph (k) of the proposed AD be broken out into paragraphs for Groups 1 and 2 airplanes for clarification of the terminating actions for the requirements of AD 2017–01–08. DAL stated that paragraph (k) of the proposed AD does not address PRVs installed on affected HRs having P/N 42F0026 (units re-identified as P/N 42F0030). DAL noted that as a result of this, it could be interpreted that PRVs re-identified as P/N 42F0030 are still affected by the requirements in AD 2017–01–08. DAL added that this does not seem to be the intent of the proposed AD.

We agree to clarify. As stated previously, we have revised paragraph (g)(2) of this AD to clarify the definition of an affected part. As specified in paragraph (g)(4) of this AD, Group 2 airplanes do not have an affected part.

We note that all affected parts must be replaced and re-identified. Therefore, we have clarified the terminating action specified in paragraph (j) of this AD (paragraph (k) of the proposed AD) to specify that replacing all affected parts, as required by paragraph (h) of this AD (paragraph (i) of the proposed AD), terminates the requirements of AD 2017–01–08.

We note that re-identifying all unaffected parts is not required by this AD because re-identification of unaffected parts is only recommended for traceability purposes. Operators can choose to re-identify unaffected parts for their own tracking purposes, but because these parts are unaffected, we do not require re-identification in this AD. This AD only specifies terminating action for AD 2017–01–08 for airplanes on which actions in this AD are done. For any action other than the replacement required by this AD, operators can request an AMOC to AD 2017–01–08 in accordance with the procedures specified in paragraph (l)(1) of AD 2017–01–08. We have not changed this AD in either regard.

Request To Clarify Parts Re-Identification Requirement

DAL asked that the parts re-identification specified in paragraph (j)(2) of the proposed AD be clarified. DAL stated that paragraph (j)(2) of the proposed AD specifies re-identifying the part numbers of affected PRVs and HRs for Group 2 airplanes; however, paragraph (g)(4) of the proposed AD specifies that Group 2 airplanes do not have affected PRVs. DAL added that as a result of this, paragraphs (g)(2) and (j)(4) of the proposed AD are contradictory.

We agree with the commenter's request. Since Group 2 airplanes by definition do not have affected PRVs installed, there is no need to re-identify the part numbers. We have deleted paragraph (j)(2) of the proposed AD from this final rule. We have also redesignated paragraph (j)(1) of the proposed AD as paragraph (i) of this AD.

Additional Changes Made to This Final Rule

We have removed paragraph (h), ''Part Number Inspection,'' of the proposed

AD from this final rule. That action is included in the procedure for the part re-identification required by paragraph (i) of this AD (paragraph (j) of the proposed AD). We have redesignated subsequent paragraphs of this AD accordingly.

We have also changed ''PRV'' to ''part'' in paragraphs (g), (h), and (k) of this AD (paragraphs (g), (i), and (l) of the proposed AD).

Conclusion

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

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

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

Related Service Information Under 1 CFR Part 51

Airbus has issued the following service information, which describes procedures for replacing affected PRVs and re-identifying affected HRs. These documents are distinct since they apply to different airplane models.

- Service Bulletin A330–29–3131, dated August 11, 2017.
- Service Bulletin A330–29–3132, dated August 11, 2017.
- Service Bulletin A330–29–3133, dated August 11, 2017.
- Service Bulletin A340–29–4099, dated August 11, 2017.
- Service Bulletin A340–29–4100, dated August 11, 2017.
- Service Bulletin A340–29–4101, dated August 11, 2017.
- Service Bulletin A340–29–5026, dated August 11, 2017.

Safran has issued Vendor Service Bulletin 42–29–005, Revision 01, dated September 26, 2017; and Vendor Service Bulletin 42–29–006, Revision 01, dated September 27, 2017. This service information describes procedures for replacing affected PRVs, including the serial numbers of those PRVs. These documents are distinct since they apply to different airplane models.

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

Costs of Compliance

We estimate that this AD affects 103 airplanes of U.S. registry. We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Up to 6 work-hours × $85 per hour = Up to $510	$3,390	Up to $3,900	Up to $401,700.

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2019–06–03 Airbus SAS: Amendment 39–19601; Docket No. FAA–2018–0704; Product Identifier 2018–NM–066–AD.

(a) Effective Date

This AD is effective May 9, 2019.

(b) Affected ADs

This AD affects AD 2017–01–08, Amendment 39–18775 (82 FR 1593, January 6, 2017) (''AD 2017–01–08'').

(c) Applicability

This AD applies to the airplanes identified in paragraphs (c)(1), (c)(2), (c)(3), (c)(4), (c)(5), and (c)(6) of this AD, certificated in any category, all manufacturer serial numbers.

(1) Airbus SAS Model A330–223F and –243F airplanes.

(2) Airbus SAS Model A330–201, –202, –203, –223, and –243 airplanes.

(3) Airbus SAS Model A330–301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes.

(4) Airbus SAS Model A340–211, –212, and –213 airplanes.

(5) Airbus SAS Model A340–311, –312, and –313 airplanes.

(6) Airbus SAS Model A340–541 and –642 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 29, Hydraulic power.

(e) Reason

This AD was prompted by reports of depressurization of hydraulic reservoirs (HRs) caused by air leakage from the pressure relief valve (PRV) of the HR due to the extrusion of the O-ring seal from certain HR PRVs. We are issuing this AD to address air leakage from the HR PRV, which could lead to the loss of one or more hydraulic systems, with the possible loss of control of the airplane.

(f) Compliance

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

(g) Definitions for This AD

(1) Affected HRs are identified in table 1 to paragraphs (g), (h), and (i) of this AD.

(2) Affected parts are PRVs that have part number (P/N) 42F0026 and a serial number (S/N) identified in Safran Vendor Service Bulletin 42–29–005, Revision 01, dated September 26, 2017; and Safran Vendor Service Bulletin 42–29–006, Revision 01, dated September 27, 2017; as applicable.

(3) Group 1 airplanes have an affected part installed.

(4) Group 2 airplanes do not have an affected part installed. A Model A330 airplane on which Airbus SAS modifications 206863, 206864, and 206965 have been embodied in production is a Group 2 airplane, provided the airplane remains in that configuration.

(5) In table 1 to paragraphs (g), (h), and (i) of this AD: Green hydraulic circuit is (G), blue hydraulic circuit is (B), and yellow hydraulic circuit is (Y).

Table 1 to paragraphs (g), (h), and (i) of this AD – *Affected HR part numbers, re-identified HR part numbers, and compliance times*

Airplanes	Affected HR part number	Compliance time (after the effective date of this AD)	Re-identified HR part number
Model A330 (all models)	42F1005 (G)	Within 4 months	42F1008
	42F1203 (B)	Within 28 months	42F1205
	42F1304 (Y)	Within 28 months	42F1307
Model A340-200 and -300	42F1005 (G)	Within 4 months	42F1008
	42F1203 (B)	Within 28 months	42F1205
	42F1304 (Y)	Within 28 months	42F1307
Model A340-500 and -600	42F1412 (G)	Within 4 months	42F1416
	42F1512 (B)	Within 4 months	42F1516
	42F1607 (Y)	Within 4 months	42F1609

(h) Replacement

For Group 1 airplanes: At the applicable time specified in table 1 to paragraphs (g), (h), and (i) of this AD, replace each affected part in accordance with the applicable service information specified in paragraphs (h)(1) through (h)(7) of this AD.

(1) Airbus Service Bulletin A330–29–3131, dated August 11, 2017.

(2) Airbus Service Bulletin A330–29–3132, dated August 11, 2017.

(3) Airbus Service Bulletin A330–29–3133, dated August 11, 2017.

(4) Airbus Service Bulletin A340–29–4099, dated August 11. 2017.

(5) Airbus Service Bulletin A340–29–4100, dated August 11, 2017.

(6) Airbus Service Bulletin A340–29–4101, dated August 11, 2017.

(7) Airbus Service Bulletin A340–29–5026, dated August 11, 2017.

(i) Part Re-Identification

For Group 1 airplanes: Concurrently with the replacement of the affected part required by paragraph (h) of this AD, re-identify the part numbers of affected HRs as specified in table 1 to paragraphs (g), (h), and (i) of this AD, in accordance with the applicable service information specified in paragraphs (h)(1) through (h)(7) of this AD.

(j) Terminating Action for AD 2017–01–08

Replacement of all affected parts on an airplane, as required by paragraph (h) of this AD, terminates all requirements of AD 2017–01–08 for that airplane.

(k) Parts Installation Prohibition

(1) For Group 1 airplanes: After replacement of all affected parts as required by paragraph (h) of this AD, do not install any affected part.

(2) For Group 2 airplanes: As of the effective date of this AD, do not install any affected part.

(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 Branch, 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 Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* If any service information contains procedures or tests that are identified as RC, those

procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(m) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2018–0064, dated March 23, 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–2018–0704.

(2) For more information about this AD, contact Vladimir Ulyanov, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax: 206–231–3229.

(n) Material Incorporated by Reference

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

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

(i) Airbus Service Bulletin A330–29–3131, dated August 11, 2017.

(ii) Airbus Service Bulletin A330–29–3132, dated August 11, 2017.

(iii) Airbus Service Bulletin A330–29–3133, dated August 11, 2017.

(iv) Airbus Service Bulletin A340–29–4099, dated August 11, 2017.

(v) Airbus Service Bulletin A340–29–4100, dated August 11, 2017.

(vi) Airbus Service Bulletin A340–29–4101, dated August 11, 2017.

(vii) Airbus Service Bulletin A340–29–5026, dated August 11, 2017.

(viii) Safran Vendor Service Bulletin 42–29–005, Revision 01, dated September 26, 2017.

(ix) Safran Vendor Service Bulletin 42–29–006, Revision 01, dated September 27, 2017.

(3) For Airbus service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAL, Rond Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone: +33 5 61 93 36 96; fax: +33 5 61 93 45 80; email: *airworthiness.A330-A340@airbus.com;* internet *http://www.airbus.com.*

(4) For Safran service information identified in this final rule, contact Safran Aero Boosters, 121 Route de Liers, 4041 Milmort (Herstal), Belgium; telephone: +32 4 278 8111; fax: +32 4 278 52 07; internet *https://www.safran-aero-boosters.com*, or *https://www.safran-group.com/company/safran-aero-boosters.*

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

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

Issued in Des Moines, Washington, on March 22, 2019.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–06405 Filed 4–3–19; 8:45 am]

BILLING CODE 4910–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Parts 1264 and 1271

RIN 2700–AE48

[Document Number NASA–19–003: Docket Number NASA–2019–0002]

Implementation of the Federal Civil Penalties Inflation Adjustment Act and Adjustment of Amounts for 2019

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: The National Aeronautics and Space Administration (NASA) has adopted a final rule making inflation adjustments to civil monetary penalties within its jurisdiction. This final rule represents the annual 2019 inflation adjustments of monetary penalties. These adjustments are required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

DATES: This final rule is effective April 4, 2019.

FOR FURTHER INFORMATION CONTACT: Bryan R. Diederich, Office of the General Counsel, NASA Headquarters, telephone (202) 358–0216.

SUPPLEMENTARY INFORMATION:

I. Background

The Inflation Adjustment Act, as amended by the 2015 Act, required Federal agencies to adjust the civil penalty amounts within their jurisdiction for inflation by July 1, 2016. Subsequent to the 2016 adjustment, Federal agencies were required to make an annual inflation adjustment by January 15 every year thereafter.[1] Under the amended Act, any increase in a civil penalty made under the Act will apply to penalties assessed after the increase takes effect, including penalties whose associated violation predated the increase.[2] The inflation adjustments mandated by the Act serve to maintain the deterrent effect of civil penalties and to promote compliance with the law.

Pursuant to the Act, adjustments to the civil penalties are required to be made by January 15 of each year. The annual adjustments are 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 (28 U.S.C. 2461 note, section (5)(b)(1)). Based on that formula, the cost-of-living adjustment multiplier for 2019 is 1.02522 percent. Pursuant to the 2015 Act, adjustments are rounded to the nearest dollar.

II. The Final Rule

This final rule makes the required adjustments to civil penalties for 2019. Applying the 2019 multiplier above, the adjustments for each penalty are summarized below.

Law	Penalty description	2018 penalty	Penalty adjusted for 2019
Program Fraud Civil Remedies Act of 1986	Maximum Penalties for False Claims	$11,181	$11,463
Department of the Interior and Related Agencies Appropriations Act of 1989, Public Law 101–121, sec. 319.	Minimum Penalty for use of appropriated funds to lobby or influence certain contracts.	19,639	20,134
Department of the Interior and Related Agencies Appropriations Act of 1989, Public Law 101–121, sec. 319.	Maximum Penalty for use of appropriated funds to lobby or influence certain contracts.	196,387	201,340

[1] *See* 28 U.S.C. 2461 note.

[2] Inflation Adjustment Act section 6, *codified at* 28 U.S.C. 2461 note.

Law	Penalty description	2018 penalty	Penalty adjusted for 2019
Department of the Interior and Related Agencies Appropriations Act of 1989, Public Law 101–121, sec. 319.	Minimum penalty for failure to report certain lobbying transactions.	19,639	20,134
Department of the Interior and Related Agencies Appropriations Act of 1989, Public Law 101–121, sec. 319.	Maximum penalty for failure to report certain lobbying transactions.	196,387	201,340

This rule codifies these civil penalty amounts by amending parts 1264 and 1271 of title 14 of the CFR.

III. Legal Authority and Effective Date

NASA issues this rule under the Federal Civil Penalties Inflation Adjustment Act of 1990,[3] as amended by the Debt Collection Improvement Act of 1996,[4] and further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015,[5] which requires NASA to adjust the civil penalties within its jurisdiction for inflation according to a statutorily prescribed formula.

Section 553 of title 5 of the United States Code generally requires an agency to publish a rule at least 30 days before its effective date to allow for advance notice and opportunity for public comments.[6] After the initial adjustment for 2016, however, the Civil Penalties Inflation Adjustment Act requires agencies to make subsequent annual adjustments for inflation ''notwithstanding section 553 of title 5, United States Code.'' Moreover, the 2019 adjustments are made according to a statutory formula that does not provide for agency discretion. Accordingly, a delay in effectiveness of the 2019 adjustments is not required.

IV. Regulatory Requirements

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis.[7]

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995,[8] NASA reviewed this final rule. No collections of information pursuant to the Paperwork Reduction Act are contained in the final rule.

List of Subjects in 14 CFR Parts 1264 and 1271

Claims, Lobbying, Penalties.

For the reasons stated in the preamble, the National Aeronautics and Space Administration is amending 14 CFR parts 1264 and 1271 as follows:

PART 1264—IMPLEMENTATION OF THE PROGRAM FRAUD CIVIL PENALTIES ACT OF 1986

■ 1. The authority citation for part 1264 continues to read as follows:

Authority: 31 U.S.C. 3809, 51 U.S.C. 20113(a).

§ 1264.102 [Amended]

■ 2. In § 1264.102, remove the number ''$11,181'' and add in its place the number ''$11,463'' in the statements following paragraphs (a)(1)(iv) and (b)(1)(iii).

PART 1271—NEW RESTRICTIONS ON LOBBYING

■ 3. The authority citation for part 1271 continues to read as follows:

Authority: Section 319, Pub. L. 101–121 (31 U.S.C. 1352); Pub. L. 97–258 (31 U.S.C. 6301 *et seq.*).

§ 1271.400 [Amended]

■ 4. In § 1271.400:

■ a. In paragraphs (a) and (b), remove the words ''not less than $19,639 and not more than $196,387'' and add in their place the words ''not less than $20,134 and not more than $201,340''.

■ b. In paragraph (e), remove the two occurrences of ''$19,639'' and add in their place ''$20,134'' and remove ''$196,387'' and add in its place ''$201,340''.

Appendix A to Part 1271 [Amended]

■ 5. In appendix A to part 1271:

■ a. Remove the two occurrences of the number ''$19,639'' and add in its place the number ''$20,134''.

■ b. Remove the two occurrences of the number ''$196,387'' and add in its place the number ''$201,340''.

Cheryl E. Parker,

NASA Federal Register Liaison Officer.

[FR Doc. 2019–06555 Filed 4–3–19; 8:45 am]

BILLING CODE 7510–13–P

[3] Public Law 101–410, 104 Stat. 890 (1990).

[4] Public Law 104–134, section 31001(s)(1), 110 Stat. 1321, 1321–373 (1996).

[5] Public Law 114–74, section 701, 129 Stat. 584, 599 (2015).

[6] *See* 5 U.S.C. 533(d).

[7] 5 U.S.C. 603(a), 604(a).

[8] 44 U.S.C. 3506.

FEDERAL TRADE COMMISSION

16 CFR Part 316

[3084–AB38]

Controlling the Assault of Non-Solicited Pornography and Marketing Rule

AGENCY: Federal Trade Commission.

ACTION: Confirmation of rule.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') has completed its regulatory review of its rule implementing the Controlling the Assault of Non-Solicited Pornography and Marketing Act (''CAN–SPAM Rule'' or ''Rule'') as part of the agency's periodic review of all its regulations and guides, and has determined to retain the Rule in its present form.

DATES: This action is effective as of April 4, 2019.

ADDRESSES: Relevant portions of the record of this proceeding, including this document, are available at *https://www.ftc.gov.*

FOR FURTHER INFORMATION CONTACT: Christopher E. Brown, (202) 326–2825, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Ave. NW, CC–8528, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Commission reviews its rules and guides periodically to seek information about their costs and benefits, as well as their regulatory and economic impact. This information assists the Commission in identifying rules and guides that warrant modification or rescission.

Pursuant to this process, on June 28, 2017, the Commission initiated a regulatory rule review by publishing notice in the **Federal Register** requesting public comment on the CAN–SPAM Rule (''Comment Request'').[1] The Commission sought comment on standard regulatory review questions such as whether or not the Rule continues to serve a useful purpose and continues to be needed; the costs and benefits of the Rule for consumers and businesses; and what effects, if any, technological or economic changes have had on the Rule. In addition to generally requesting comment recommending modifications to the Rule, the Commission also invited comment regarding three specific issues; namely, whether it should: (1) Expand or contract the categories of messages that are treated as ''transactional or relationship messages;'' (2) shorten the time-period for processing opt-out requests; and (3) specify additional activities or practices that constitute aggravated violations. After considering the comments and evidence, the Commission has determined to retain the Rule without modification.

II. Background

Enacted in 2003, and effective since January 1, 2004, the CAN–SPAM Act regulates the transmission of all commercial electronic mail (''email'') messages, and authorizes the Commission to issue mandatory rulemakings and discretionary regulations concerning certain definitions and provisions of the Act.[2]

In 2004, pursuant to the Act's directive, the Commission promulgated the ''Adult Labeling Rule,'' which requires that commercial emails containing sexually oriented material include the phrase ''SEXUALLY–EXPLICIT:'' as the first 19 characters in the subject heading and exclude sexually oriented materials from both the subject heading and content of the email message that is initially viewable upon opening the message.[3]

In 2005, the Commission issued rule provisions that define the relevant criteria for determining the ''primary purpose'' of an email message.[4] These rule provisions also clarify that the definitions of certain terms derived from the Act and appearing in the Rule are prescribed by particular referenced sections of the Act. Finally, these rule provisions also include a severability provision, so that in the event a portion of the Rule is stricken, the remainder of the Rule will stay in effect.

Pursuant to its discretionary authority, the Commission promulgated additional CAN–SPAM Rule provisions in 2008.[5] These rule provisions: (1) Add a definition of the term ''person'' to clarify that the Act's obligations are not limited to natural persons; (2) modify the definition of ''sender'' to make it easier to determine which of multiple parties advertising in a single email message is responsible for complying with the Act's opt-out requirements; (3) clarify that a sender can include an accurately-registered post office box or private mailbox established under United States Postal Service regulations to satisfy the Act's requirement that a commercial email display a ''valid physical postal address;'' and (4) clarify that an email recipient cannot be required to pay a fee, provide information other than his or her email address and opt-out preferences, or take any steps other than sending a reply email message or visiting a single internet web page to opt out of receiving future email from a sender.

III. Regulatory Review Comments and Analysis

The Commission considered ninety-two comments in response to its Comment Request.[6] Most of these comments were from individual consumers. Two comments were from consumer groups,[7] seven comments were from industry and trade association groups,[8] one comment was from an internet service provider,[9] and two comments were from providers of email-related services.[10] This rule review notice summarizes the comments received and explains the Commission's decision to retain the Rule. It also explains why the Commission declines to propose the adoption of commenters' suggested modifications.

The Commission discusses the comments in three sections. In Section A, the Commission considers the comments that address whether there is a continuing need for the Rule and the costs and benefits of the Rule for consumers and businesses. In Section B, the Commission analyzes the comments that respond to its specific requests for comments regarding whether the Commission should modify the definition of ''transaction or relationship messages,'' shorten the time-period for processing opt-out requests, and specify additional activities or practices that constitute aggravated violations. In Section C, the Commission discusses the comments that propose other modifications to or clarifications of the Rule.

A. Continuing Need for the Rule

Most of the commenters who addressed the issue supported retaining the Rule; only a few recommended rescinding it. Nineteen commenters explicitly stated that there is a continuing need for the Rule, citing benefits to consumers such as the value of having an enforcement tool for taking action against offenders and a reduction in the volume of unsolicited commercial emails.[11] For example, the Electronic Privacy Information Center (''EPIC''), a consumer advocacy group, asserted that, ''[w]hile the volume of spam is lower than it was just a few years ago, the need for the Rule continues.'' [12] EPIC also asserted that ''[c]ompanies and individuals still make use of the Rule[,] and its continued enforcement, including substantial financial judgments imposed against violators, will serve to dissuade others from sending spam emails.'' [13] Similarly, the Online Trust Alliance (''OTA'') maintained that ''there is a continuing need for the Rule and that it has been beneficial by setting guidelines that limit the amount of unwanted or deceptive email reaching consumers.''

[1] *Federal Trade Commission: Rule Review; request for public comments,* 82 FR 29254 (June 28, 2017).

[2] 15 U.S.C. 7701–7713.

[3] *Federal Trade Commission: Label for Email Messages Containing Sexually Oriented Material; Final Rule,* 69 FR 21023 (Apr. 19, 2004).

[4] *Federal Trade Commission: Definitions and Implementation Under the CAN–SPAM Act; Final Rule,* 70 FR 3110 (Jan. 19, 2005).

[5] *Federal Trade Commission: Definitions and Implementation Under the CAN–SPAM Act; Final Rule,* 79 FR 29654 (May 21, 2008).

[6] All rule review comments are on the public record and available on the Commission's website at *www.ftc.gov/policy/public-comments/2017/06/initiative-704.* This rule review notice cites comments using the last name of the individual commenter or the name of the organization, followed by the number assigned by the Commission. The Commission received 100 comments, but some of the comments were blank or not germane to the Rule Review, and therefore, removed from consideration. As a result, some of the comments discussed in this notice bear a comment number higher than 92.

[7] Electronic Privacy Information Center (''EPIC'') (93); CAUCE North America (''CAUCE'') (96).

[8] Lashback, LLC (''Lashback'') (89); Electronic Retailing Association (''ERA'') (94); Data & Marketing Association (''DMA'') (95); American Bankers Association (''ABA'') (97); Email Sender and Provider Coalition (''ESPC)'' (86); MPA-The Association of Magazine Media (''MPA'') (90); Online Trust Alliance (''OTA'') (85).

[9] X Mission, L.C. (''X Mission'') (88).

[10] ValiMail, Inc. (''ValiMail'') (91); L-Soft Sweden AB (''L-Soft'') (98).

[11] Santiago (2); Smith (3); Schenlle (28); Pesterfield (30); Freedman (33); Bristol (42); Kester (54); Garson (62); Schroeder (71); Davis (78); Hoofnagle (79); OTA (85); ESPC (86); Lashback (89); MPA (90); EPIC (93); ERA (94); DMA (95); Butler (100).

[12] EPIC (93).

[13] *Id.*

The MPA—The Association of Magazine Media—also encouraged the Commission to retain the Rule, arguing that it ''strikes an appropriate balance of protecting consumers while avoiding overly burdensome or expensive regulatory requirements for businesses.'' [14] One individual commenter opined that ''companies would not provide a method of opt-out . . . if they were not required to and subject to monetary penalties for noncompliance.'' [15]

Thirteen commenters indirectly addressed the question of whether there is a continuing need for the Rule, and impliedly supported its retention as evidenced by their descriptions of the Rule's benefits to consumers and/or recommendations for furthering the consumer-friendly practices required by the Rule.[16] For example, XMission, L.C., a small-business internet service provider, explained its desire to more aggressively prosecute spammers and ''creat[e] a more compliant commercial email marketing industry.'' [17] Another commenter wrote: ''[t]he Commission should adjust the Rule to maintain its substantial consumer benefits while addressing its shortcomings.'' [18]

Forty-two commenters did not respond to the question of whether the Commission should retain the Rule.[19] Many of these commenters merely described their personal experiences with spam emails or offered observations regarding industry compliance with the Rule, but did not articulate any recommendations concerning the Rule.[20]

Eleven commenters were very critical of the Rule, expressing complaints such as the Rule is ''too weak,'' ''ineffectual,'' or ''an abject failure,'' but none recommended repeal or rescission.[21] Only six individual commenters explicitly recommended repeal of the Rule.[22] And, while these commenters typically urged the Commission to replace the Rule with something more effective, they did not suggest any alternatives. Moreover, none of these commenters identified any specific costs or burdens associated with complying with the Rule.

In light of the comments received, the Commission concludes that a continuing need exists for the Rule. The comments predominantly indicate that the Rule benefits consumers and does not impose significant costs to businesses. Accordingly, the Commission will retain the Rule.

B. Rule Modifications Regarding Specific Issues

The CAN–SPAM Act expressly authorizes the Commission to issue discretionary regulations concerning the Act's definition of the term ''transaction or relationship messages,'' its provisions regarding the time-period for processing opt-out requests, and activities or practices that constitute aggravated violations.[23] Accordingly, the Commission requested public comments regarding whether it should modify the Rule with respect to the aforementioned definition and provisions of the Act. As discussed below, several commenters addressed possible modifications to the Rule concerning these issues.

1. Comments Regarding the Definition of ''Transactional or Relationship Messages''

Six commenters considered whether the Commission should expand or contract the definition of ''transactional or relationship messages.'' [24] Three commenters opposed modifying the definition and three commenters argued for the definition's expansion and/or clarification. Two individual commenters among the six cautioned the Commission not to contract the scope of messages defined as ''transactional or relationship,'' but offered no justification for their position.[25] Lashback, LLC (''Lashback''), an email compliance service monitoring company, opposed modification of the definition because it ''do[es] not believe that this issue is at the crux of the problems in email,'' but rather, ''the focus should remain on misleading messages that are sent solely or primarily for marketing purposes.'' [26]

Another commenter urged the Commission to modify the definition of ''transactional or relationship messages'' to ''make clear that a company/business is allowed to email information to a consumer upon their request even when the email would otherwise be considered a commercial email message.'' [27] The commenter further remarked that it is common for consumers to ''request[] various pieces of information through . . . email including product information,'' but companies are hesitant to respond ''for fear of potentially violating the Rule's requirements.'' [28] It appears that the commenter, in essence, proposes that a subsequent commercial email message from a sender to a recipient of a commercial product or service purchased from the sender be deemed a ''transactional or relationship message'' based upon the prior existing business relationship. This would require modification of the definition of a ''transactional or relationship message'' as well as a ''commercial electronic mail message.'' The commenter, however, offered no evidence that this concern is widespread, or that the proposed modification would benefit consumers.

Another commenter, OTA, proposed that so-called ''informational'' messages concerning ''news items, site activity, product updates, etc.'' should be deemed ''transactional or relationship messages'' because ''they relate directly to the service or product that the consumer requested and clearly do not contain commercial content.'' [29] The Commission notes, however, because the Rule already specifies that the definition of ''transactional or relationship message'' includes email messages whose primary purpose is to provide certain types of product information (*e.g.,* warranty, recall, safety, security) and product updates or upgrades, no change is necessary.[30]

[14] MPA (90).

[15] Schnelle (28).

[16] CAUCE (96); ABA (97); ValiMail (91); XMission (88); Ford (99); Upton (87); Courchaine (43); Huff (36); McIntosh (26); Dayman (82); Garrett (81); Francis (67); Cinatl (45).

[17] XMission (88).

[18] Ford (99).

[19] Silverstein (4); Lugo (7); Ohlstein (8); Boyd (9); Simone (10); Wheeler (11); Boyden (12); Reinoehl (13); Andrews (14); LaBerge (15); Kellner (16); Barr (17); Barry (18); Spencer (19); Willis (21); Evans (22); Burke (23); Nguyen (24); Donie (25); Wroblewski (27); Hildebrand (29); Blatnik (34); Vitale (38); E. Alterman (39); Menonna (40); T. Bell (41); Schulzrinne (56); Bothwell (57); Babineaux (59); Searcy (60); Phillips (61); Wippler (63); Barth (66); Atkinson (68); E. Smith (69); Walton (73); Masters (74); Shoemaker (75); Rucker (76); Hyde (77).

[20] *See e.g.,* Simone (10); Barry (18); Spencer (19); Evans (22); Blatnik (34); Vitale (38).

[21] L-Soft (98) (''it has failed''); Balsam (31) (''isn't working''); Nowlin (44) (''abject failure''); Crabtree (53) (''isn't working''); Bickers (47) (''let the Act expire''); Hofstee (50) (''effectiveness too low''); S. Smith (70) (''isn't working''); Przeclawski (65) (''sham''); Augenstein (58) (''does not work''); Winokur (48) (''ineffectual''); D. Alterman (52) (''too weak'').

[22] K. Bell (5); Wyckoff (35); Carlson (37); Dawson (49); Roth (51); St. Peters (64).

[23] *See* 15 U.S.C. 7702(17)(B) (''The Commission by regulation pursuant to section 7711 of this title may modify the definition in subparagraph (A) [the term ''transactional or relationship message''] to expand or contract the categories of messages that are treated as transactional or relationship messages . . .''); 15 U.S.C. 7704(c).

[24] Schnelle (28); Hoofnagle (79); OTA (85); Lashback (89); American Bankers Association (97); Butler (100).

[25] Hoofnagle (79); Butler (100).

[26] Lashback (89).

[27] Schnelle (28).

[28] *Id.*

[29] OTA (85).

[30] *See* 16 CFR 316.2(o) (clarifying that the term ''transaction or relationship message'' is the same as the definition of that term in the Act, which includes an electronic mail message the primary purpose of which is to provide warranty

Continued

Finally, the American Bankers Association recommended that the Commission clarify that the definition of ''transactional or relationship message'' includes ''two types of emails that banks and other businesses frequently send . . . to existing customers: educational emails and invitations to events.'' [31] Depending on the specific facts and subject matter, an invitation to an event or an educational email may be commercial in nature, might be transactional or relationship-related, or might be considered to be ''other content that is not transactional or relationship content'' that is not subject to the Act's commercial email message requirements.[32] Given the fact-specific nature of any determination, no rule modification is warranted.

For each of the reasons stated above, the Commission believes that the record does not support modification of the Rule on this issue. To assist with businesses' understanding of these issues, however, the Commission will review and consider revising its existing Compliance Guide for Businesses.

2. Comments Regarding Time-Period for Processing Opt-Out Requests

Twelve comments addressed whether the Commission should modify the Rule to shorten the time-period for processing opt-out requests to less than ten business days: Six comments opposed shortening the time-period,[33] while six comments favored shortening the time-period.[34]

Industry and trade association groups that opposed shortening the time-period typically noted the financial and/or operational burdens that such a modification would impose upon small businesses that often process opt-out requests manually or without the assistance of automated processing.[35] The OTA regarded a shorter time-period as unnecessary, citing evidence that top retailers already comply ''well inside the ten-day time period for opt-outs, largely due to the sophisticated systems employed to manage their email communications to consumers.'' [36]

Commenters that favored shortening the time-period, however, viewed ten business days as unnecessarily lengthy, particularly in light of available technologies that allow companies to conduct automated processing of opt-outs.[37] Some of these commenters urged the Commission to adopt alternative time-periods as short as one day or one business day.[38] However, none of these comments provided the Commission with evidence showing how or to what extent the current ten business-day time-period has negatively affected consumers, nor did they address the concerns noted by other commenters that such a change may pose substantial burdens on small businesses. For these reasons, the Commission declines to propose a modification to the Rule that would shorten the time-period for opting out of commercial email messages.

3. Comments Regarding Activities or Practices That Constitute Aggravated Violations

Four commenters responded to the Commission's request for public comments regarding whether it should modify the Rule to specify additional activities or practices that constitute aggravated violations. Two commenters proposed that the Commission specify as ''aggravated violations'' activities or practices that are already considered violations of the requirements for commercial messages under the Act or Rule.[39] For example, Lashback urged the Commission to specify as an aggravated violation a sender's failure to identify a commercial email message as an advertisement ''[i]n order to increase the visibility and impact of this simple and clear requirement—and likely drive greater compliance and better disclosures to consumers.'' [40] An individual commenter recommended that the Commission ''substantially increase fines for entities that do not effectively provide methods for unsubscribing that require no further information beyond the email address and the desire to leave.'' [41] Neither of these commenters, however, provided evidence indicating that ''those activities or practices are contributing substantially to the proliferation of commercial electronic mail messages that are unlawful under [section 7704(a) of the Act].'' [42]

The Email Sender and Provider Coalition (''ESPC'') recommended that the Commission specify the practice known as ''snowshoeing'' as an aggravated violation, which it described as ''the use of multiple domains and IP addresses (obtained from different ISPs) . . . [to] keep the volume of emails sent [per domain or IP address] very low . . . while permitting large aggregate volumes to be distributed across hundreds or thousands of IP addresses and domains.'' [43] According to the ESPC, snowshoeing can be, and often has been, used to ''send emails related to phishing, fraud, or identity theft schemes, but current tools are inadequate to combat the practice because restrictions placed upon the viewing and screening of email limit the effectiveness of content-based filters.[44] The ESPC did not provide, however, any evidence regarding the prevalence or incidence of snowshoeing.[45] Nor did it offer support for its assertion that specifying this practice as an aggravated violation would have a minimal impact on businesses. Moreover, depending on the facts, some snowshoeing already is deemed an aggravated violation under section 7704(b)(2), which proscribes the automated creation of multiple accounts so that those accounts may be used to send commercial email.

One individual commenter recommended that the Commission consider whether to specify the use of third-party lookups for email addresses as an aggravated violation under the Act.[46] The commenter described, in particular, how companies regularly exchange ''anonymized'' or ''de-identified'' email addresses that could ultimately be de-anonymized and linked to actual consumers, and emphasized that these companies engage in email marketing. Although not stated explicitly, the commenter's concern seems to be the potential use of such techniques by spammers to execute well-informed phishing attacks or identity theft schemes. The commenter did not provide, however, any evidence of widespread consumer harm resulting from the use of third-party lookups for email addresses, nor did the commenter address the potential costs to businesses of specifying such a practice as an aggravated violation. For all of the reasons stated above, the Commission

information, product recall information, or safety or security information with respect to a commercial product or service used or purchased by the recipient).

[31] ABA (97).

[32] *See* 16 CFR 316.3(a)(3) (providing analysis for determining whether the Act's commercial email requirements apply to an ''electronic mail message [that] contains both the commercial advertisement or promotion of a commercial product or service as well as other content that is not transactional or relationship content'').

[33] Schnelle (28); OTA (85); ESPC (86); Lashback (89); MPA (90); ERA (94).

[34] Huff (36); Bristol (42); Schulzrinne (56); Davis; Upton (87); CAUCE (96).

[35] ESPC (86); OTA (85); Lashback (89); MPA (90); ERA (94).

[36] OTA (85).

[37] Bristol (42); Schulzrinne (56); Davis (78).

[38] *See e.g.,* Huff (36); Schulzrinne (56); Davis (78).

[39] Lashback (89); Butler (100).

[40] Lashback (89); *cf.* 15 U.S.C. 7704(a)(5)(i) (''clear and conspicuous identification that the message is an advertisement or solicitation'').

[41] Butler (100); *cf.* 16 CFR 316.5.

[42] 15 U.S.C. 7704(c)(2).

[43] ESPC (86).

[44] *Id.*

[45] *Id.*

[46] Hoofnagle (79). The Hoofnagle comment did not expressly define the term ''third-party lookup.''

believes there is insufficient evidence in the record to support modification of the Rule to specify any additional activities or practices that constitute aggravated violations.

C. Other Proposed Modifications to or Clarifications of the Rule

Various commenters supporting the Rule suggested additional modifications to, or clarifications of, the Rule. As discussed in detail below, while many of the proposed rule changes may describe effective email procedures that could inform industry best practices, the record does not justify a rulemaking to consider whether to incorporate these proposals into the existing Rule.

1. Comments Regarding an Opt-In Approach to Commercial Email Messages

At least 40 commenters expressed concerns or dissatisfaction with the CAN–SPAM Act's opt-out approach to commercial email messages. Most of these commenters recommended that the Commission modify the Rule to require prior consent (opt-in) from recipients before initiating commercial email messages.[47] Some even suggested that the Rule adopt a ''double opt-in'' approach that requires recipients to confirm their initial request by responding to a link sent to the recipients' email address.[48] These commenters cumulatively identified a number of factors—the greater burden of self-help imposed on consumers, IT departments, and/or ISPs; privacy concerns; and lack of uniformity with anti-spam laws in other countries—arguing for the necessity of modifying the Rule to require an opt-in approach to commercial email messages.[49] Modifying the Rule to require prior consent from recipients of commercial email messages, however, would be beyond the text and scope of the Act.[50]

2. Comments Regarding Modification of Rule To Enhance Opt-Out Provisions

Several comments proposed modifications to the Rule intended to better effectuate the Act's provisions related to opt-out requirements for commercial email messages.[51] Most of these comments expressly requested that the Commission clarify the requirement that opt-out notices be ''clear and conspicuous.''[52] A few comments argued that standardized terminology (*e.g.,* ''unsubscribe,'' ''opt-out,'' or ''remove'') and additional guidance on placement, language, color/contrast ratio, and text size would benefit consumers without imposing extra costs on businesses.[53] In support of this recommendation, the OTA cited its own ''Email Marketing Best Practices and Unsubscribe Audit,'' which showed that, from 2015 to 2016, the percentage of top retailers that had good opt-out practices fell from 96 percent to 88 percent.[54] The OTA further advocated, as did Lashback, that the Rule require opt-out links to be text, not images, so they have longevity.[55] Another commenter urged the Commission to prohibit opt-out mechanisms from setting tracking cookies unrelated to the recipient's decision to opt out.[56] The Ford comment echoed the proposals regarding type size and visibility requirements, and further asked the Commission to require a ''standardized box containing information on how to unsubscribe, at the bottom of each email, akin to other standardized labels for food, drugs, and cigarettes.''[57] Such a standardized mechanism, Ford argued, would not only help to remedy the problem of inconspicuous opt-out instructions, but also simplify and expedite the opt-out process to the extent that it could ''be invoked by a user's email client software.'' Similarly, other commenters suggested that the Commission adopt a standardized opt-out approach that requires minimal participation by the recipient.[58]

There is no evidence in the record to support the proposed changes to the opt-out instructions. Additionally, none of the comments provides the Commission with information about the costs and benefits of these proposed rule changes. Moreover, standardized opt-out terminology or mechanisms would need to be consistent with the authority of the Commission, which is somewhat circumscribed with respect to any requirement to include specific language or labels in a commercial email message.[59] For these reasons, the Commission declines to propose the adoption of commenters' suggested rule modifications regarding opt-out requirements.

3. Comments Regarding Modification of Rule To Account for Changes in Technology

A few commenters recommended that the Commission modify the Rule to account for technological developments that have occurred since the promulgation of the Rule. For example, two comments called attention to the emergence of technical approaches for mechanically processing opt-out instructions, and suggested that the Commission encourage or mandate their use via Rule modification.[60]

Other comments emphasized that email authentication standards aimed at helping email providers verify sender domains and thwart email spoofing and phishing attacks have been developed and are commonly employed.[61] Two comments encouraged the Commission to facilitate the adoption of authenticated email standards—*e.g.,* DomainKeys Identified Mail (DKIM), Sender Policy Framework (SPF), and Domain-Based Message Authentication, Reporting, and Conformance (DMARC)—through the Rule.[62]

Other commenters pointed to the progress made on email authentication standards as a basis for the Commission to reconsider the feasibility of a Do Not Email Registry pursuant to 15 U.S.C. 7708.[63]

The Commission appreciates the information provided by these comments, but notes that the record is

[47] *See e.g.,* K. Bell (6); Ohlstein (8); Boyden (12); Barr (17); Wroblewski (30); Hofstee (50); Schulzrinne (56); Upton (87); CAUCE (96); L-Soft (98).

[48] Boyden (12); L-Soft (98).

[49] *See e.g.,* Boyd (9); Reinoehl (13); Donie (25); Balsam (31); Bristol (42); Bickers (47); Crabtree (53); Schulzrinne (56); Walton (73); ESPC (86); CAUCE (96); Butler (100).

[50] *See* 15 U.S.C. 7704(c); 15 U.S.C. 7711; CAUCE (96) (''We realize that the FTC cannot change the text of CAN SPAM, but we note that an opt-in rule, as in the European Union and Canadian laws, rather than opt-out, would be far more effective.''); Upton (87) (same).

[51] Schulzrinne (56); OTA (85); Ford (99); Hoofnagle (79); Lashback (89).

[52] Hoofnagle (79); OTA (85); Lashback (89); Ford (99); *see also* 15 U.S.C. 7704(a)(3) (requiring inclusion of a return address or comparable mechanism in commercial electronic mail that is ''clearly and conspicuously displayed''); 7704(a)(5)(A)(i) (requiring that notice of recipient's opportunity to decline to receive further commercial electronic mail messages from the sender be ''clear and conspicuous'').

[53] Hoofnagle (79); OTA (85); Lashback (89); Ford (99).

[54] OTA (85).

[55] *Id.;* Lashback (89).

[56] Hoofnagle (79).

[57] Ford (99).

[58] Schulzrinne (56) (advocating for a ''standards-based opt-out link (URL) that requires no further user input''); Butler (100) (recommending a ''one-click method'' for opting out).

[59] *See* 15 U.S.C. 7711(b) (''Subsection (a) [granting the Commission authority to implement the provisions of the CAN–SPAM Act] may not be construed to authorize the Commission to establish a requirement pursuant to section 7704(a)(5)(A) [requiring the inclusion of advertisement identifier, opt-out notice, and physical address in commercial electronic mail messages] of this title to include any specific words, characters, marks, or labels in a commercial electronic mail message . . .'').

[60] Upton (87) and CAUCE (96) (both citing a method for ''one-click unsubscription'' as defined in the internet Engineering Task Force (IETF) Request for Comment (RFC) 8058).

[61] OTA (85); ValiMail (91); Ford (99).

[62] ValiMail (91); Ford (99).

[63] Hoofnagle (79); Ford (99); *cf.* EPIC (93) (advocating for a domain name based Do Not Email Registry without appealing to progress made on email authentication standards).

silent concerning the increased costs to businesses, if any, that would result from modifying the Rule to mandate the implementation of these various technologies. Nor does the record explain why the Commission's codification of developing technology into the Rule is necessary where private markets have produced email authentication and opt-out technologies that are already enjoying widespread use. Moreover, as some comments have acknowledged, the Commission's Bureau of Consumer Protection (BCP) has previously addressed the issue of email authentication in a Staff Perspective issued in March 2017.[64] Specifically, BCP staff encouraged businesses to help reduce the volume of phishing email messages and protect their reputations by fully implementing various low cost, readily available email authentication solutions.[65] Although the Commission is familiar with these technical solutions that can help reduce unsolicited commercial email, it is also mindful of the potential pitfalls in incorporating technological standards in regulations. In the absence of any evidence in the record regarding the costs and benefits of imposing technologically-based rule changes, the Commission is not persuaded that the proposed modifications are appropriate at this time. However, the Commission will continue to monitor this issue and encourage the private market in its move toward developing and implementing technology that reduces the volume of spam.

4. Comments Regarding Modification of Rule To Clarify Definition of Certain Terms Derived From the Act

It is a violation of the CAN–SPAM Act to initiate the transmission of a commercial message or a transaction or relationship message that contains, or is accompanied by, materially false or misleading header information.[66] Accordingly, the Act provides that a "'from' line (*the line identifying or purporting to identify a person initiating the message*) that accurately identifies any person who initiated the message shall not be considered materially false or materially misleading." [67] As both OTA and ValiMail explain in their comments, however, in addition to the "from" line that is displayed within the end user's email client, industry practice (via email authentication standards) permits senders to identify themselves using additional "from" lines not visible to the end user, such as the Reply-to or Return-Path fields.[68] Consequently, both comments urged the Commission to specify that the definition of "from" refers only to the "from" field displayed in a user's email client, alluding to concerns about phishing attacks involving scammers who put one address in Reply-to or Return-Path fields, but another address in the From field. Neither comment, however, offers any evidence that the absence of such a clarification impedes the Commission's ability to enforce CAN–SPAM violations involving false header information or that such a clarification would enable greater enforcement. Nonetheless, the Commission staff will continue to monitor this issue and use other resources available to ensure that marketers understand their obligations under the Rule.

The CAN–SPAM Act also authorizes providers of internet access service to enforce certain provisions of the Act.[69] Where an internet access service brings a claim against a sender of email messages, the statute requires that the person providing consideration or inducing another person to initiate the electronic mail message has actual or constructive knowledge that the person initiating the email is engaging, or will engage, in a pattern or practice violating the Act.[70] XMission, L.C. ("XMission"), on behalf of itself and other small to mid-sized internet service providers (ISPs), advocated that the Commission eliminate the scienter requirement from the definition of "procure" so that "*bona fide* [Plaintiff] internet service provider[s] . . . [are] held to the same standard as FTC or government plaintiffs." [71] The scienter requirement, however, is statutory—a requirement that the Commission likely cannot alter via a rule.

The CAN–SPAM Act prohibits a person from initiating a commercial mail message with a subject heading that is "deceptive," which the Act defines as "be[ing] likely to mislead a recipient, acting reasonably under the circumstances, about a material fact regarding the contents or subject matter of the message." [72] The Lashback comment urges the Commission to modify the Rule to clarify the definition of "deceptive" by adding language that describes examples of deceptive messages,[73] but the Act expressly states that the prohibition against deceptive subject headings is "consistent with the criteria used in enforcement of [Section 5 of the FTC Act]," [74] and therefore, already provides clarity concerning the meaning of "deceptive." [75] Moreover, in the absence of any evidence in the record demonstrating confusion regarding what constitutes a deceptive subject heading, the Commission is not persuaded that the proposed modification is necessary.

5. Comments Regarding Modification of Rule That Would Be Contrary to Congressional Intent Under the Act

A number of comments expressed support for modifications to the Rule that arguably exceed the Commission's authority to issue regulations implementing the Act.[76] Such recommendations included: (1) Requiring that language identifying a commercial email message as an advertisement be included in the subject line; [77] (2) extending opt-out obligations to third-party list providers; [78] (3) requiring consumer permission before transferring or selling a consumer's email address to a third-party; [79] (4) blocking all unsolicited spam from servers outside the U.S.; [80] (5) limiting the frequency at which emails may be sent to recipients; [81] (6) minimizing or

[64] OTA (85) and ValiMail (91) (both citing Businesses Can Help Stop Phishing and Protect their Brands Using Email Authentication, Staff Perspective, March 2017, *available at https://www.ftc.gov/news-events/blogs/business-blog/2017/03/want-stop-phishers-use-email-authentication*).

[65] Businesses Can Help Stop Phishing and Protect their Brands Using Email Authentication, Staff Perspective, March 2017, *available at https://www.ftc.gov/news-events/blogs/business-blog/2017/03/want-stop-phishers-use-email-authentication.*

[66] 15 U.S.C. 7704(a)(1).

[67] 15 U.S.C. 7704(a)(1)(B) (emphasis added).

[68] OTA (85); ValiMail (91).

[69] 15 U.S.C. 7706(g)(1).

[70] 15 U.S.C. 7706(g)(2).

[71] XMission (88).

[72] 15 U.S.C. 7704(a)(2).

[73] Lashback (89).

[74] 15 U.S.C. 7704(a)(2).

[75] *See e.g.,* FTC Policy Statement on Deception (October 14, 1983), *available at https://www.ftc.gov/system/files/documents/public_statements/410531/831014deceptionstmt.pdf.*

[76] *Cf.* 15 U.S.C. 7702(17)(B) (granting the Commission rulemaking authority to modify the definition of the term "transactional or relationship" message); 15 U.S.C. 7704(c) (granting the Commission supplementary rulemaking authority regarding the time-period for processing opt-out requests and activities or practices that constitute aggravated violations); 15 U.S.C. 7711 (granting the Commission authority to issue regulations implementing certain CAN–SPAM Act provisions in accordance with the Administrative Procedure Act).

[77] Silverstein (4) ("The FTC should issue a rule requiring all spam to have the subject line prefixed with "ADV:"); Bristol (42) ("require unsolicited commercial emails to include a word or phrase in the send line that indicates that the email is an advertisement").

[78] EPIC (93).

[79] Barr (17).

[80] Davis (78).

[81] Santiago (2) ("have a Rule that commercial senders could only send such emails 1–2 times per year absent a specific request from the consumer that such emails continue more frequently"); Wippler (63) ("1 marketing email from the company per 32 or 48 hours").

eliminating federal preemption;[82] (7) requiring companies that provide access to transmission lines connecting users to the internet to filter out and report spam to regulatory authorities;[83] (8) providing email recipients a private right of action to enforce CAN–SPAM Act violations;[84] and (9) permitting class-action lawsuits.[85]

The first suggestion is unfeasible, because the Act expressly prohibits the Commission from designating ''any specific words, characters, marks, or labels'' to satisfy the requirement that initiators identify a commercial electronic mail message as an advertisement or solicitation.[86] The second suggestion also conflicts with the plain language of certain definitions under both the Act and Rule. As the Commission has previously stated, ''a list owner must honor opt-out requests only if it qualifies as the 'sender' of a commercial email (*i.e.,* it is an initiator and its 'product, service, or internet website' are 'advertised or promoted' in the email).''[87] The Commission also declines to consider the remaining proposed modifications because each would be inconsistent with the Commission's circumscribed authority under the Act.

6. Comments Regarding Law Enforcement Priorities and Policies

A number of comments made proposals better understood as recommendations for how the Commission should implement enforcement priorities and policies rather than modifications to the Rule. These proposals included: (1) Allowing consumers to report and/or forward spam to the FTC;[88] (2) sending violators a link to CAN–SPAM regulations and guidance documents;[89] (3) including willful violators of CAN–SPAM on a ''blacklist'' for circulation among email service providers;[90] (4) working with payment processors and other intermediaries to shutter accounts belonging to spammers;[91] and (5) providing guidance to states regarding the scope of preemption under the Act.[92]

The Commission has already adopted the first recommendation, and continues to encourage consumers to report illegal spam to *ftccomplaintassistant.gov* or forward it directly to *spam@uce.gov.* Such complaints from consumers help the Commission to detect patterns of fraud and abuse, and identify potential investigative targets. The Commission also appreciates the recommendations provided by the remaining comments, and will take such information into consideration as it continues to formulate enforcement priorities that would benefit consumers and secure industrywide compliance with the CAN–SPAM Rule.

IV. Conclusion

The comments overwhelmingly: (1) Favor retention of the Rule and assert that there is a continuing need for the Rule; (2) conclude that the Rule benefits consumers; (3) assert that the Rule does not impose substantial economic burdens; and (4) conclude that the benefits outweigh the minimal costs the Rule imposes. The Commission has analyzed the proposed benefits to consumers of proposed changes to the Rule, including any evidence provided of those benefits, and balanced those proposed benefits against the cost of implementing the changes, the need for the change, and alternative means of providing these benefits for consumers, such as consumer education materials. Despite some comments recommending that the Commission adopt modifications to the Rule, there is insufficient evidence in the record to demonstrate that such modifications are necessary and would, in fact, help consumers. Additionally, none of the comments proposing modifications or clarifications that could potentially burden industry sufficiently analyzed the associated costs.

The FTC plans to review and consider revising its consumer and business education materials to address the concerns raised in the comments submitted pursuant to this Rule Review to ensure that consumers and businesses more easily understand the Rule's protections and requirements. Furthermore, the Commission has a variety of enforcement tools available to help consumers better understand the Rule's protections and ensure compliance. If, at a later date, the Commission concludes that the Rule, case law interpreting the Rule, and the FTC's other enforcement tools do not provide adequate guidance and protection for consumers in the marketplace, it can then consider, based on a further record, whether and how to amend the Rule. Accordingly, the Commission has determined to retain the current Rule and is terminating this review.

By direction of the Commission.

April J. Tabor,

Acting Secretary.

[FR Doc. 2019–06562 Filed 4–3–19; 8:45 am]

BILLING CODE 6750–01–P

[82] Bristol (42); St. Peters (64); Ford (99).

[83] Davis (78).

[84] Balsam (31) (''enable the spam recipients to file lawsuits, not just the AG, FTC, and ISPs''); Wippler (63) (expressly recommending modification of the CAN–SPAM Act); Walton (73) (''the rules should allow for recipients of spam to enforce opt-out requests''); *cf.* 15 U.S.C. 7706.

[85] Barth (66); *cf.* 15 U.S.C. 7706.

[86] 15 U.S.C. 7711(b).

[87] 79 FR at 29660.

[88] Pesterfield (30); Francis (67).

[89] Pesterfield (30).

[90] *Id.*

[91] Ford (99).

[92] *Id.*

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9852]

RIN 1545–BL96

Chapter 4 Regulations Relating to Verification and Certification Requirements for Certain Entities and Reporting by Foreign Financial Institutions

Correction

In rule document 2019–05527 appearing on pages 10976–10989 in the issue of March 25, 2019, make the following corrections:

§ 1.1471–4 [Corrected]

■ 1. On page 10981, in the third column, in paragraph (j), in the 6th and 10th lines ''March 26, 2019'' should read ''March 25, 2019''.

§ 1.1471–5 [Corrected]

■ 2. On page 10987, in the first column, in paragraph (m), in the 6th and 11th lines ''March 26, 2019'' should read ''March 25, 2019''.

§ 1.1472–1 [Corrected]

■ 3. On page 10989, in the third column, in paragraph (h), in the 5th and 9th lines ''March 26, 2019'' should read ''March 25, 2019''.

[FR Doc. C1–2019–05527 Filed 4–3–19; 8:45 am]

BILLING CODE 1301–00–D

DEPARTMENT OF EDUCATION

34 CFR Chapter II

[Docket ID ED–2018–OESE–0069: CFDA Number: 84.283B]

Final Priorities, Requirements, Definitions, and Performance Measures—Comprehensive Centers Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Final priorities, requirements, definitions, and performance measures.

SUMMARY: The Assistant Secretary for Elementary and Secondary Education (Assistant Secretary) announces priorities, requirements, definitions, and performance measures under the Comprehensive Centers (CC) program. The Assistant Secretary may use these priorities, requirements, definitions, and performance measures for competitions in FY 2019 and subsequent years. We take this action to focus Federal technical assistance to address State-defined needs. We intend these priorities, requirements, definitions, and performance measures to increase the effectivess and efficiency of service delivery to all States.

DATES: These priorities, requirements, definitions, and performance measures are effective May 6, 2019.

FOR FURTHER INFORMATION CONTACT: Kim Okahara, U.S. Department of Education, 400 Maryland Avenue SW, Room 3E106, Washington, DC 20202. Telephone: (202) 453–6930. Email: *kim.okahara@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Purpose of Program: The CC program supports the establishment of not less than 20 CCs to provide capacity-building services to State educational agencies (SEAs), regional educational agencies (REAs), local educational agencies (LEAs), and schools that improve educational outcomes for all students, close achievement gaps, and improve the quality of instruction.

Program Authority: Section 203 of the Educational Technical Assistance Act of 2002 (ETAA) (20 U.S.C. 9601 *et seq.*).

We published a notice of proposed priorities, requirements, definitions, and performance measures (NPP) for this program in the **Federal Register** on September 28, 2018 (83 FR 49031). That notice contained background information and our reasons for proposing the particular priorities, requirements, definitions, and performance measures.

Public Comment: In response to our invitation in the NPP, we received 26 comments on the proposed priorities, requirements, definitions, and performance measures.

We group major issues according to subject matter. Generally, we do not address technical and other minor changes.

Analysis of Comments and Changes: There are differences between the NPP and this notice of final priorities, requirements, definitions, and performance measures (NFP). An analysis of the comments and of any changes in the priorities, requirements, definitions, and performance measures since publication of the NPP follows.

Proposed Priority and Program Requirements—Regional Centers

Comment: One commenter suggested that the CCs should support States in the effective application of research in the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act of 2015 (ESEA), Title III-funded initiatives involving English learners and immigrant students.

Discussion: Although we have not chosen to require Regional Centers or the National Center to support States in the implementation of ESEA Title III, nothing in this NFP precludes Centers from working with States on specific initiatives related to English learners. While we would encourage this work, we believe it is important to allow Centers the flexibility to be responsive to State needs.

Changes: None.

Comment: One commenter requested that we define the terms ''intensive'' and ''targeted'' capacity-building services. Another commenter recommended inclusion of definitions for short-, medium-, and long-term outcomes. Another commenter supported the proposed definition of ''capacity building.''

Discussion: We appreciate the commenters' support and requests for clarification. We defined ''intensive'' and ''targeted'' capacity-building services and ''outcomes'' in the NPP, and clarify and finalize them in this NFP. We agree that expanding the definitions of short-, medium-, and long-term outcomes to include estimated timeframes can aid applicants in systematically planning, monitoring, and evaluating services. We expect applicants to use these definitions to drive decisions on proposed resources (*e.g.,* staff) and proposed types of services (*e.g.,* coaching). Furthermore, we expect applicants to develop clear, specific, and actionable evaluation questions that address the components, interrelationships, and timeframes (short-, medium-, and long-term) in the FY 2019 CC Logic Model. We also clarify ''intensive'' and seek to align the definition with the FY 2019 CC Logic Model.

Changes: We have revised the definition of ''outcome'' to include differentiation of ''short-term, ''medium-term,'' and ''long-term'' outcomes. ''Short-term outcomes'' means effects of receiving capacity-building services after one year. ''Medium-term outcomes'' means effects of receiving capacity-building services after two to three years. ''Long-term outcomes'' means effects of receiving capacity-building services after four or more years. We have revised the definition of ''intensive'' to clarify that the term means assistance, as well as ''periodic reflection, continuous feedback, and use of evidence-based improvement strategies.'' We have also revised the definition of ''intensive'' to clarify that this category of capacity-building services should ''result in medium-term and long-term outcomes.''

Comment: Several commenters raised concerns about CCs assisting States in addressing audit findings and corrective actions as a result of the Department's monitoring. A few commenters stated that Centers should not be required to ensure that States comply with Department regulations or enforce the Department's corrective actions as a result of monitoring and recommended clarifying the scope of the requirement. Some commenters also indicated that this requirement may negatively impact trust and working relationships between CCs and their respective clients and recipients. One commenter sought clarification on whether the requirement specified certain monitoring or audit findings.

Discussion: We agree that CCs should not enforce, and are prohibited from enforcing, compliance with Department-issued corrective actions or resolve audit findings as a result of the Department's monitoring. Further, we agree that it is outside the scope of the CC program for CCs to provide technical assistance on non-programmatic or repayment issues that arise in audits and other oversight reports. However, we believe CCs can, at the request of the client, identify and carry out capacity-building services that help States address corrective actions or audit findings that are programmatic in nature (*e.g.,* developing policies and

procedures to improve equitable resource allocation).

Changes: We have revised *Priority 1—Regional Centers* to clarify that CCs are permitted to provide, in response to a request from a client, capacity-building services designed to to help States address corrective actions resulting from audit findings and monitoring conducted by the Department.

Comment: Multiple commenters raised concerns about the *Program Requirements for Regional Centers* (6) for a full-time Project Director. One commenter agreed with the full-time Project Director requirement. Several commenters stated a full-time Project Director would reduce the budget available to hire qualified experts or consultants. Some commenters also emphasized that having a full-time Project Director may limit the Project Director from engaging in other work that might benefit the clients and recipients to be served. One commenter stated that some of the most talented and qualified individuals may not be available full-time and therefore could not serve as Project Directors.

Multiple commenters recommended changing the full-time Project Director requirement to 0.6–0.75 full-time equivalency (FTE) or to reduce the requirement significantly. Alternatively, one commenter recommended splitting the full-time Project Director requirement with a deputy director or senior advisor, noting the management structure in the Regional Educational Laboratory (REL) program as an example.

Discussion: We recognize the important role that Project Directors play in carrying out the priorities and requirements of the CC program. We appreciate the commenters' concerns and recognize that, in some cases, a full-time Project Director may hamper a CC's ability to recruit and retain experts to meet State needs. Accordingly, to allow the Centers more flexibility, we are revising the requirement to provide Centers the option to have one person serve as Project Director on a nearly full-time basis or to have Co-Project Directors serving on a half-time basis. An applicant must be able to demonstrate that the proposed Project Director or proposed Co-Project Directors are able to lead and manage all aspects of the Center's work.

Changes: We have revised the *Program Requirements for Regional Centers* (6) Project Director requirement to give applicants two options: (i) One at minimum 0.75 FTE Project Director or (ii) two at minimum 0.5 FTE Co-Project Directors.

Comment: Multiple commenters requested to remove the requirement that the Project Director be located in the Center's assigned region.

Several commenters expressed that qualified Project Directors may not live in a State served by the Regional Center but may be physically closer to clients served by that Regional Center. One commenter stated that a Project Director may connect remotely to their respective clients and recipients, and therefore does not need to reside in the region.

Other commenters expressed support for the Department's requirement to have Project Directors located in their assigned regions.

Discussion: We appreciate both the commenters who supported this requirement and the commenters that believe the Department should remove it.

Upon further examination of this issue, for maximum flexibility, we are removing the Project Director residency requirement and revising the *Application Requirements for All Centers* (6) regarding the Regional Centers' communications plans. We believe these changes will provide the flexibility that some commenters sought in the operation of their Centers while continuing to emphasize our belief that cultivating in-person relationships with clients, recipients, and partners that are knowledgeable of the identified needs for that region is critical to the successful operation of any Regional Center.

Changes: We have removed the Project Director residency requirement under the *Program Requirements for Regional Centers* (6). In place of the requirement, we have revised the *Application Requirement for All Centers* (5) to request that an applicant describe its plan to continuously cultivate in-person relationships with clients, recipients, and partners that are knowledgeable of the identified needs for that region.

Comment: One commenter stated that Regional Center staff should be located in the region.

Discussion: We disagree with the commenter. To ensure maximum flexibility in the successful operation of the Centers, we believe that Regional Center staff should not be required to be located in the region. To this end, we have also removed the residency requirement for the Project Director. Key personnel must, however, be able to provide on-site services at the intensity and duration appropriate to achieve agreed-upon milestones, outputs, and outcomes described in State service plans.

Changes: None.

Comment: One commenter requested clarification on whether the applicant needs to be physically based in the region. A couple of commenters supported the requirement that the entity be physically located in the region.

Discussion: We appreciate the commenters that supported the requirement for the applicant to be physically located in the region. We reaffirm the requirement that the applicant must be located in the region to which it applies.

Changes: None.

Comment: One commentor sought clarification on who the client is for the Regional Centers.

Discussion: We clarify that the client refers to the Chief State School Officer (CSSO) or his or her designee.

Changes: None.

Comment: One commenter expressed concern that, under the *Proposed Requirements for Regional Centers* (2) and (4), LEAs could request intensive services from Regional Centers without prior consultation or approval from the CSSO or designees (clients). Some commenters agreed with providing capacity-building services to LEAs, in collaboration with SEAs, to implement programs funded under ESEA.

Discussion: We appreciate this concern and clarify that Regional Centers, consistent with *Program Requirements for Regional Centers* (1), must demonstrate that they have consulted and garnered commitment from CSSOs or their designees prior to carrying out capacity-building services. CSSOs or their designees are the Regional Centers' clients and will work with their respective Center to identify recipients of services (*i.e.,* teams at the SEA-, REA-, LEA-, or school-level).

Changes: None.

Comment: Multiple commenters stated that the Department should preserve the FY 2012 Regional Center configuration outlined in the CC notice inviting applications for new awards for FY 2013, published in the **Federal Register** on June 6, 2012 (77 FR 33564).

Discussion: While we appreciate the commenters' request to preserve the FY 2012 regional configuration, we believe that by reducing the number of States assigned to each Regional Center, Regional Centers can more effectively support their assigned States in implementing and scaling-up of evidence-based programs, practices, and interventions.

Changes: None.

Comment: Some commenters expressed that the proposed FY 2019 regional configuration of State

assignments would be detrimental to their States' ability to implement State and Federal programs because they have built long-standing, collaborative relationships with other States.

Similarly, two State commenters requested to stay in their existing FY 2012 regional configuration in order to limit disruption to working relationships among SEAs.

Discussion: We recognize the importance of positive, collaborative working relationships among States. However, nothing in the priority or the requirements precludes any State from partnering with another State, or from working with the National Center to request capacity-building services involving another State regardless of regional assignment. Nevertheless, we understand the commenters' concern and believe that should a State determine, after earnest negotiation with its assigned Regional Center, that the Regional Center is not able to meet its needs (*e.g.,* the Regional Center is not able to secure appropriate experts to meet a State's needs), a State should have flexibility to request to be assigned to a different Regional Center. To that end, the Department intends to include in the FY 2019 notice inviting applications for this program the provisions under *Flexibility and Requirements for Regional Center Assignments* established in the notice of final priorities, requirements, and selection criteria-Comprehensive Centers Program published in the **Federal Register** on June 6, 2012 (77 FR 33573), which allow an SEA, in any fiscal year, to indicate to the Department its desire to affiliate with a different Regional Center, regardless of the geographic location of that Center. A State could exercise this option once in any two-year period.

Changes: None.

Comment: Multiple commenters submitted alternative regional configurations. Some commenters recommended grouping States that have similar characteristics, such as school-age populations, proportion of economically disadvantaged students, and comparable increased costs to service rural areas. Other commenters expressed support for the FY 2019 regional configuration.

Discussion: We appreciate the expressions of support for the proposed FY 2019 regional configuration. We believe that such regional configurations would increase administrative and travel costs, ultimately resulting in reduced services to States. Furthermore, the National Center will have the responsibility to convene States—including, as appropriate, those States that share similar characteristics so that such States can discuss common high-leverage problems (*e.g.,* addressing educator shortages in sparsely populated areas). For these reasons, we decline to revise our proposed configuration to assign Regional Centers to non-contiguous States that share similar characteristics.

Changes: None.

Comment: Several commenters stated that Regional Centers that serve sparsely populated States will not have adequate funding, resulting in limited access to resources. The same commenters requested that we provide adequate funding to those Regional Centers to account for the increased costs of service delivery in areas of sparse population.

Discussion: We agree with the commenters' request to ensure that Regional Centers that serve rural populations are funded at an adequate level. In order to ensure that Regional Centers can meet the unique needs of clients and recipients in their assigned region, we plan to institute a minimum award amount of $1,000,000 for each Regional Center contingent on CC funding. This award amount should enable Regional Centers that serve rural areas to account for the increased cost burdens of service delivery. In addition, and consistent with section 203 of the ETAA (20 U.S.C. 9601 *et seq.*), we consider the school-age population, proportion of economically disadvantaged students, and the increased costs of service delivery in areas of sparse population when determining the amount of funds to make available to each Regional Center.

Changes: None.

Comment: One commenter expressed a concern that Regional Centers serving sparsely populated States may not have access to appropriate experts needed to carry out effective capacity-building services.

Discussion: Consistent with the *Application Requirements for All Centers* (3), all entities must be able to demonstrate in their application and throughout the grant period that they can effectively secure the services of experts and other consultants to address identified and emerging State needs. Nothing in *Priority 1—Regional Centers* or the *Program Requirements for Regional Centers* precludes Regional Centers from securing appropriate expertise, such as through subgrants or contracts, with entities or individuals in order to carry out capacity-building services.

Changes: None.

Comment: Some commenters suggested that Regional Centers should be aligned with the RELs.

Discussion: Consistent with the ETAA, in establishing CC regions, the Department considers their alignment with the 10 geographic regions served by the RELs established under section 941(h) of the Educational Research, Development, Dissemination, and Improvement Act of 1994 (*see* section 203(a)(2)(A) of the ETAA). To facilitate collaboration among RELs and CCs, we believe further alignment between the Regional Centers configuration will increase the likelihood that coordination among capacity-building services occurs.

Changes: We have revised Region 3 to serve Puerto Rico and the Virgin Islands. We have revised Region 7 to serve Alabama, Florida, and Mississippi. We have revised Region 11 to serve Nebraska, North Dakota, South Dakota, and Wyoming. We have revised Region 12 to serve Colorado, Kansas, and Missouri. We have revised Region 13 to serve Bureau of Indian Education (BIE), New Mexico, and Oklahoma. We have revised Region 15 to serve Arizona, California, Nevada, and Utah.

Comment: Some commenters suggested that, in addition to providing intensive capacity-building services, Regional Centers should also provide targeted capacity-building services.

Discussion: We believe allowing Regional Centers to provide targeted capacity-building services could result in duplication of efforts and that the National Center is best positioned to provide targeted capacity-building services to eligible recipients with like needs. States also have the option to request services directly from the National Center.

Changes: None.

Comment: Some commenters supported the Department in directing CCs to provide assistance in the areas of evidence-based practices, professional development models, and unique issues facing rural and remote districts and schools.

Discussion: We appreciate and share the commenters' interest in assisting States in the implementation of evidence-based practices, professional development models, and support to sparsely populated areas.

Changes: None.

Comment: One commenter stated that although the proposed priorities may decrease duplication of services provided by the Regional Centers and the National Center (*e.g.,* the National Center, by providing learning opportunities on English language learners nationally in comparison to

multiple Regional Centers providing similar learning opportunities for their respective States), they may also increase bureaucracy, explaining that if the Content Centers established by the FY 2012 Comprehensive Centers competition were preserved, such services could be provided to address State issues.

Discussion: We maintain that the FY 2019 configuration enables greater flexibility for Centers to provide differentiated and coordinated supports to all States. By eliminating the seven Content Centers, we believe that we will minimize duplication of resource development and learning opportunities to States.

Changes: None.

Comment: One commenter asserted that Regional Centers must have appropriate expertise, including, but not limited to, expertise in balancing budgets.

Discussion: We agree that Regional Centers should have this expertise. Pursuant to *Application Requirements for All Centers* (3)(i)–(iv), applicants must demonstrate expertise in the following areas: Managing budgets, performance management processes, root-cause analysis, and monitoring and evaluation.

Changes: None.

Comments: Some commenters sought clarification on the differences between the REL program and the CC program.

Discussion: The CC program emphasizes the delivery of capacity-building services that support implementation of State-identified initiatives (*i.e.,* conducting a needs assessment, developing a logic model, identifying evidence-based strategies, practices, and interventions, planning for implementation and implementing evidence-based strategies, practices, and interventions, and monitoring for continous improvement). In contrast to the CC program, the REL program emphasizes applied research, development, and dissemination of educational innovations, and evaluation of the effectiveness of educational innovations. REL services assist States, districts, and other stakeholders in conducting applied research, providing support and training for the application of research to education problems, and disseminating credible, up-to-date research on the efficacy of educational innovations. For more information, visit *https://ies.ed.gov/ncee/edlabs/*.

Changes: None.

Comment: Some commenters expressed concerns that requiring, as part of the application, a memorandum of understanding (MOU) with entities that operate RELs in the region to which they are applying may unfairly advantage those entities that currently operate an REL or introduce conflicts of interest, such as an entity not agreeing to execute MOUs for competing entities prior to award.

Discussion: We agree with the commenters that expressed concern that requiring an entity to submit an MOU as part of its application may introduce conflicts of interest for any entity that currently operates an REL.

Changes: We have removed *Application Requirements for All Centers* (4). We have revised the *Program Requirements for Regional Centers* (5) to include submission of copies of MOU(s) with REL(s) and other Department-funded technical assistance providers within 90 days of receiving an award.

Comment: Another commenter sought clarification on how the Department or CCs would conduct needs assessments to determine State priorities.

Discussion: We clarify that the Department will not be conducting needs assessments. Rather, as outlined in *Application Requirements for All Centers* (3)(iii) and *Program Requirements for Regional Centers* (1), Regional Centers must work with their assigned States to conduct needs assessments.

Changes: None.

Comment: Another commenter expressed that the CCs may have a significant positive impact for small businesses and their employees.

Discussion: We agree with the commenter that small businesses and their employees may benefit from this program. Consistent with *Program Requirements for Regional Centers* (5), Regional Centers are required to identify and enter into partnership agreements with, among other entities, businesses and industry with the purpose of supporting States in the implementation and scale-up of evidence-based programs, practices, and interventions, as well as reducing duplication of services to States.

Changes: None.

Comment: Some commenters asked if Regional Centers could make resources or staff available to all States should Regional Centers or their staff have expertise in a specific area.

Discussion: Nothing precludes a State from requesting that its assigned Regional Center procure experts that may be affiliated with another Regional Center or National Center. The National Center, however, has the sole responsibility to develop and widely disseminate resources to all States.

Changes: None.

Proposed Priority and Program Requirements—National Center

Comment: One commenter supported the Department's emphasis on helping States serve students from low-income families.

Discussion: We appreciate the commenter's support on emphasizing services to States that serve students from low-income families.

Changes: None.

Comment: Some commenters contended that the services to be offered by the National Center are duplicative and would not add significant value. One commenter added that the education field does not lack the types of resources or services that the National Center may provide. Other commenters expressed support for the types of services the National Center would provide.

Discussion: We appreciate the commenters' support for the types of services the National Center would provide. We further note that, contrary to the assertion of some commenters, the National Center is specifically designed to minimize duplication of services in the CC program and to provide demand-driven resources, that, by definition, are unlikely to be available elsewhere and thus will be of significant value to State clients. The National Center will deliver services to State clients and identified recipients to address common high-leverage programs, implementation challenges, and emerging needs, such as but not limited to expanding school choice. Accordingly, the National Center will only create resources that address common client needs, identified in coordination with Regional Centers. The National Center will also be responsible for coordinating experts, internal and external to the CC network, to provide targeted capacity-building services to States, as defined in this notice.

Changes: None.

Comment: Some commenters sought clarification on whether there will be a centralized place that displays upcoming events and opportunities from Regional Centers and if any State or Regional Center may participate in events or opportunities carried out by the National Center.

Discussion: The Department is always trying to disseminate information more widely. We note that the *Program Requirements for the National Center* (2), (4), and (5) outline requirements to maintain the CC network website and disseminate information. This website will provide all States and Regional Centers with access to upcoming events and State service plans, as appropriate.

Regional Centers may participate in National Center activities, at the request of the client or Department.

Changes: None.

Comment: One commenter sought clarification on Regional and National Center collaboration.

Discussion: Program Requirements for Regional Centers (4) requires Regional Centers to collaborate with the National Center to support client and recipient participation in learning opportunities (*e.g.,* communities of practices, leadership academies, and convenings). The cooperative agreement will outline specific requirements regarding collaboration between Regional Centers and the National Center.

Changes: None.

Comment: One commenter stated that the National Center should not be charged with addressing audit findings.

Discussion: We agree that the National Center should not be responsible for addressing or enforcing the resolution of corrective actions or audit findings as a result of the Department's monitoring. Further, we agree that it is outside the scope of the CC program for CC's to provide technical assistance on non-programmatic or repayment issues that arise in audits and other oversight reports. However, we believe that identifying common services to help address findings from finalized Department monitoring reports or audit findings related to programmatic issues is an appropriate role for the National Center.

Changes: None.

Comment: Another commenter stated that the National Center is counterintuitive and not useful for States that believe strongly in States' rights and local control.

Discussion: We agree that State and local control are important in our Nation's education system. While the National Center is intended to provide targeted and universal capacity-building services to all States, participation in those opportunities and events is entirely voluntary.

Changes: None.

Comment: One commenter suggested a second National Center that would focus exclusively on evidence-based programs and practices.

Discussion: While we appreciate the suggestion, we reject the commenter's recommendation to create a second National Center. All Regional Centers must work with States to identify, implement, and sustain evidence-based practices that support improved educator and student outcomes. To that end, the National Center will help develop and disseminate resources that support the use of evidence-based practices. Therefore, we believe a second National Center focused exclusively on evidence-based practices would be duplicative.

Changes: None.

Proposed Program Logic Model

Comment: Several commenters suggested revisions to the proposed logic model, including: Adding increased equity and reduction of disproportionalities; changing improved educational opportunities to include access to current and future learning experiences for the child's developmental stage and back-filling learning opportunities; including that learning relies on funds of knowledge; modifying disadvantaged student to consider hindrances to excelling at school; and modifying improved learning outcomes to include expanded outcomes beyond academics.

Discussion: We appreciate the commenters' suggestions. The FY 2019 CC Logic Model places a renewed focus on economically disadvantaged students and schools and implementing comprehensive support and improvement activities and targeted support and improvement activities under section 1111(d) of the ESEA as required by the ETAA. Nothing precludes CCs, however, from providing capacity-building services to support the administration and implementation of programs authorized under the ESEA for all students. Accordingly, we reject the recommendations to modify the logic model in order to account for all potential services the CCs may provide for States and clients.

Changes: None.

Comment: Some commenters stated that there is a disconnect in the logic model target population of disadvantaged and low-income students and the requirements language, such as mentioning students from low-income families and disadvantaged students in the FY 2019 CC Logic Model and only mentioning students from low-income families in *Priority 1—Regional Centers*.

Discussion: We share the commenters' concern to align the FY 2019 CC Logic Model with the appropriate target populations and seek to align the FY 2019 CC Logic Model with the priorities described in this notice. If Centers provide appropriate capacity-building services to SEAs, LEAs, REAs, and schools, then individual and organizational capacity to implement school improvement programs may improve. If SEAs, LEAs, REAs, and schools improve the implementation of school improvement programs (medium-term outcomes), then educational opportunities for all students may improve (long-term outcomes). In order to clarify and align target populations, we are revising *Priority 1—Regional Centers* to include ''disadvantaged students.'' The revision makes the Priority 1Regional Centers consistent with the mid- and long-term outcome target populations of ''disadvantaged and low-income students'' described in the FY 2019 CC Logic Model.

Changes: We have modified *Priority 1—Regional Centers* (1) to include ''disadvantaged students.''

Final Priorities

This notice contains two priorities. The Assistant Secretary may use one or both of these priorities for the FY 2019 CC program competition or for any subsequent competitions.

Priority 1—Regional Centers

Under this priority, applicants must demonstrate the following—

Regional Centers must provide high-quality intensive capacity-building services to State clients and recipients to identify, implement, and sustain effective evidence-based (as defined in 34 CFR 77.1) programs, practices, and interventions that support improved educator and student outcomes. As appropriate, capacity-building services must assist clients and recipients in: (1) Carrying out Consolidated State Plans approved under the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act of 2015 (ESEA), with preference given to the implementation and scaling up of evidence-based programs, practices, and interventions that directly benefit recipients that have disadvantaged students or high percentages or numbers of students from low-income families as referenced in Title I, Part A of the ESEA (ESEA secs. 1113(a)(5) and 1111(d)) and recipients that are implementing comprehensive support and improvement activities or targeted support and improvement activities as referenced in Title I, Part A of the ESEA (ESEA sec. 1111(d)); (2) implementing and scaling-up evidence-based programs, practices, and interventions that address the unique educational obstacles faced by rural populations; (3) identifying and carrying out capacity-building services to clients that help States address corrective actions or results from audit findings and monitoring, conducted by the Department, that are programmatic in nature, at the request of the client; and (4) working with the National Center to identify trends and best practices, and develop cost-effective strategies to make their work available to as many REAs,

LEAs, and schools in need of support as possible.

Applicants must propose to operate a Regional Center in one of the following regions:

Region 1: Massachusetts, Maine, New Hampshire, Vermont
Region 2: Connecticut, New York, Rhode Island
Region 3: Puerto Rico, Virgin Islands
Region 4: Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania
Region 5: Kentucky, Tennessee, Virginia, West Virginia
Region 6: Georgia, North Carolina, South Carolina
Region 7: Alabama, Florida, Mississippi
Region 8: Indiana, Michigan, Ohio
Region 9: Illinois, Iowa
Region 10: Minnesota, Wisconsin
Region 11: Nebraska, North Dakota, South Dakota, Wyoming
Region 12: Colorado, Kansas, Missouri
Region 13: Bureau of Indian Education, New Mexico, Oklahoma
Region 14: Arkansas, Louisiana, Texas
Region 15: Arizona, California, Nevada, Utah
Region 16: Alaska, Oregon, Washington
Region 17: Idaho, Montana
Region 18: Commonwealth of the Northern Mariana Islands, Federated States of Micronesia, Guam, Palau
Region 19: American Samoa, Hawaii, Republic of the Marshall Islands

Priority 2—National Center

Under this priority, applicants must demonstrate the following—

The National Center must provide high-quality universal (*e.g.,* policy briefs) and targeted (*e.g.,* peer-to-peer exchanges and communities of practice that convene SEAs, REAs, LEAs, and schools on a particular topic) capacity-building services to address the following: Common high-leverage problems identified in Regional Center State service plans (as outlined in the *Program Requirements for the National Center* (1)), common services to help address findings from finalized Department monitoring reports or audit findings, common implementation challenges faced by States and Regional Centers, and emerging national education trends.

As appropriate, universal and targeted capacity-building services must assist Regional Center clients and recipients to: (1) Implement approved ESEA Consolidated State Plans, with preference given to implementing and scaling evidence-based programs, practices, and interventions that directly benefit entities that have high percentages or numbers of students from low-income families as referenced in Title I, Part A of the ESEA (ESEA sec. 1113(a)(5) and 1111(d)) and recipients that are implementing comprehensive support and improvement activities or targeted support and improvement activities as referenced in Title I, Part A of the ESEA (ESEA sec. 1111(d)); and (2) implement and scale up evidence-based programs, practices, and interventions that address the unique educational obstacles faced by rural populations. The work of the National Center must include the implementation of effective strategies for reaching and supporting as many SEAs, REAs, LEAs, and schools in need of services as possible.

Types of Priorities

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Final Requirements

The Assistant Secretary establishes the following requirements for the Comprehensive Centers program.

Program Requirements for Regional Centers: Applicants that receive grants under this program must:

(1) Develop State service plans annually in consultation with each State's Chief State School Officers that includes the following elements: High-leverage problems to be addressed, phase of implementation (*e.g.,* needs assessment), capacity-building services to be delivered, key personnel responsible, key Department-funded technical assistance partners, milestones, outputs, outcomes, and, if appropriate, fidelity measures. The annual State service plans must be an update to the Regional Center's five-year plan submitted as part of the Regional Center's application. The annual State service plan elements must also correspond to the relevant sections of the FY 2019 CC Logic Model.

(2) Develop and implement an effective personnel management system that enables the Regional Center to efficiently obtain and retain the services of nationally recognized content experts and other consultants with direct experience working with SEAs, REAs, and LEAs. Personnel must demonstrate that they have the appropriate expertise to deliver quality, intensive services that meet client and recipient needs similar to those in the region to be served.

(3) Develop and implement an effective communications system that enables routine and ongoing exploration of client and recipient needs as well as feedback on services provided. The system must enable routine monitoring of progress toward agreed-upon outcomes, outputs, and milestones; periodic assessment of client satisfaction; and timely identification of changes in State contexts that may impact the success of the project. The communications system must include processes for outreach activities (*e.g.,* regular promotion of services and products to clients and potential and current recipients, particularly at the local level), regular engagement and coordination with the National Center and partner organizations (*e.g.,* other federally funded technical assistance providers), use of feedback loops across organizational levels (Federal, State, and local), and regular engagement of stakeholders involved in or impacted by proposed services.

(4) Collaborate with the National Center to support client and recipient participation in learning opportunities (*e.g.,* multi-State and cross-regional peer-to-peer exchanges on high-leverage problems) and support participation of Regional Center staff in learning opportunities (*e.g.,* peer-to-peer exchanges on effective coaching systems), with the goal of reaching as many REAs, LEAs, and schools in need of services as possible while also providing high-quality services.

(5) Identify and enter into partnership agreements with national organizations, businesses, and industry for the purpose of supporting States in the implementation and scaling-up of evidence-based programs, practices, and interventions, as well as reducing duplication of services to States. Within 90 days of receiving funding for an award, provide copies of MOU(s) with the REL(s) in the region that the Center serves and Department-funded technical assistance providers that are charged

with supporting comprehensive, systemic changes in States or Department-funded technical assistance providers with particular expertise (*e.g.,* early learning or instruction for English language learners).

(6) Be located in the region the Center serves. The Project Director must be capable of managing all aspects of the Center and be either at minimum 0.75 FTE or there must be two Co-Project Directors each at minimum 0.5 FTE. The Project Director or Co-Project Directors and key personnel must also be able to provide on-site services at the intensity, duration, and modality appropriate to achieving agreed-upon milestones, outputs, and outcomes described in annual State service plans.

(7) Within 90 days of receiving funding for an award, demonstrate that it has secured client and partner commitments to carry out proposed State service plans.

Program Requirements for the National Center

(1) Develop a national service plan annually in consultation with the Department and Regional Centers. The national service plan must take into account commonalities in identified high-leverage problems in State service plans, finalized Department monitoring and audit findings, implementation challenges faced by Regional Centers and States, and emerging national education trends. The annual national service plan must be an update to the Center's five-year plan submitted as part of the Center's application. The annual national service plan must include, at a minimum, the following elements: High-leverage problems to be addressed, capacity-building services to be delivered, key personnel responsible, milestones, outputs, and outcome measures. The annual national service plan must also include evidence that the Center involved Regional Centers in identifying targeted and universal services that complement Regional Center services to improve client and recipient capacity.

(2) Maintain the CC network website with an easy-to-navigate design that meets government or industry-recognized standards for accessibility.

(3) Develop and implement an effective personnel management system that enables the Center to retain and efficiently obtain the services of education practitioners, researchers, policy professionals, and other consultants with direct experience with SEAs, REAs, and LEAs. Personnel must have a proven record of publishing in peer-reviewed journals, presenting at national conferences, and/or delivering quality adult learning experiences that meet client and recipient needs.

(4) Disseminate information (*e.g.,* instructional videos, toolkits, and briefs) and evidence-based practices to a variety of education stakeholders, including the general public, via multiple mechanisms such as the CC network website, social media, and other channels as appropriate.

(5) Disseminate State service plans, Center annual performance reports, and other materials through the CC network website and other channels as appropriate.

(6) Collaborate with Regional Centers to implement learning opportunities for recipients (*e.g.,* multi-State and cross-regional peer-to-peer exchanges on high-leverage problems) and develop learning opportunities for Regional Center staff to address implementation challenges (*e.g.,* peer-to-peer exchanges on effective coaching systems for English language learners).

(7) Develop and implement an effective communications system that enables routine and ongoing exploration of Regional Center client and recipient needs. The system must enable routine monitoring of progress toward agreed-upon outcomes, outputs, and milestones; periodic assessment of client satisfaction; and timely identification of changes in Federal or State contexts that may impact success of the project. The communications system must include processes for outreach activities (*e.g.,* regular promotion of services and products to clients and potential and current recipients), use of feedback loops across organizational levels (Federal, State, and local), regular engagement and coordination with the Department, Regional Centers, and partner organizations (*e.g.,* federally funded technical assistance providers), and engagement of stakeholders involved in or impacted by proposed school improvement activities.

(8) Identify potential partners and enter into partnership agreements with other federally funded technical assistance providers, industry, national associations, and other organizations to support the implementation and scaling-up of evidence-based programs, practices, and interventions.

(9) Identify a Project Director that is either at minimum 0.75 FTE or two Co-Project Directors at minimum 0.5 FTE capable of managing all aspects of the CC.

(10) Within 90 days of receiving funding for an award, demonstrate that it has secured client and partner commitments to carry out the proposed national service plan.

Final Application Requirements

All Centers

(1) Present applicable State, regional, and local data demonstrating the current needs related to building capacity to implement and scale up evidence-based programs, practices, and interventions. Reference, as appropriate, information related to the Department's finalized monitoring and audit findings.

(2) Demonstrate expert knowledge of statutory requirements, regulations, and policies related to programs authorized under ESEA and current education issues and policy initiatives for supporting the implementation and scaling up of evidence-based programs, practices, and interventions.

(3) Consistent with the priorities and requirements for this program, demonstrate expertise and experience in the following areas:

(i) Managing budgets; selecting, coordinating, and overseeing multiple consultant and sub-contractor teams; and leading large-scale projects to deliver tools, training, and other services to governments, agencies, communities, businesses, schools, or other organizations.

(ii) Designing and implementing performance management processes with staff, subcontractors, and consultants that enable effective hiring, developing, supervising, and retaining a team of subject-matter experts and professional staff.

(iii) Identifying problems and conducting root-cause analysis; developing and implementing logic models, organizational assessments, strategic plans, and process improvements; and sustaining the use of evidence-based programs, practices, and interventions.

(iv) Monitoring and evaluating activities, including, but not limited to: Compiling data, conducting interviews, developing tools to enhance capacity-building approaches, conducting data analysis using statistical software, interpreting results from data using widely acceptable quantitative and qualitative methods, and developing evaluation reports.

(4) Describe the current research on adult learning principles, coaching, and implementation science that will inform the applicant's capacity-building services, including how the applicant will promote self-sufficiency and sustainability of State-led school improvement activities.

(5) Present a proposed communications plan for working with appropriate levels of the education system (*e.g.,* SEAs, REAs, LEAs, and/or schools) to ensure there is

communication between each level and that there are processes in place to support, and continuously assess, the implementation of evidence-based programs, practices, and interventions. The applicant must describe how it will engage in meaningful consultation with a broad range of stakeholders (*e.g.,* principals, teachers, families, community members). The ideal applicant will propose effective strategies for receiving ongoing and timely input on the needs of its clients and the usefulness of its services and describe how it will continuously cultivate in-person relationships with clients, recipients, and partners that are knowledgeable of the identified needs for that region.

(6) Present a proposed evaluation plan for the project. The evaluation plan must describe the criteria for determining the extent to which: Milestones were met; outputs were met; recipient outcomes (short-term, mid-term, and long-term) were met; and capacity-building services proposed in State service plans were implemented as intended.

(7) Present a logic model informed by research or evaluation findings that demonstrates a rationale (as defined in 34 CFR 77.1) explaining how the project is likely to improve or achieve relevant and expected outcomes. This logic model must align with the FY 2019 CC Logic Model, communicate how the project will achieve its expected outcomes (short-term, mid-term, and long-term), and provide a framework for both the formative and summative evaluations of the project consistent with the applicant's evaluation plan. Include a description of underlying concepts, assumptions, expectations, beliefs, and theories, as well as the relationships and linkages among these variables, and any empirical support for this framework.

(8) Include an assurance that, if awarded a grant, the applicant will assist the Department with the transfer of pertinent resources and products and maintain the continuity of services to States during the transition to this new award period, as appropriate, including by working with the FY 2012 Comprehensive Center on Building State Capacity and Productivity to migrate products, resources, and other relevant project information to the National Center's Comprehensive Center network website.

Regional Centers

In addition to meeting the Application Requirements for All Centers, a Regional Center applicant must—

(1) describe the proposed approach to intensive capacity-building services, including identification of intended recipients and alignment of proposed capacity-building services to meet client needs. The applicant must also describe how it intends to measure the readiness of clients and recipients to work with the applicant; measure client and recipient capacity across the four capacity-building dimensions, including available resources; and measure the ability of the client and recipients to build capacity at the local level.

National Center

In addition to meeting the application requirements for all Centers, a National Center applicant must—

(1) Demonstrate expertise and experience in leading digital engagement strategies to attract and sustain involvement of education stakeholders, including, but not limited to: Implementing a robust web and social media presence, overseeing customer relations management, providing editorial support, and collecting and analyzing web analytics.

(2) Describe the intended recipients of and the proposed approach to targeted capacity-building services, including how the applicant intends to collaborate with Regional Centers to identify potential recipients and how many it has the capacity to reach; measure the readiness and capacity of potential recipients across the four dimensions of capacity-building services; and continuously engage potential recipients over the five-year period.

(3) Describe the intended recipients of and the proposed approach to universal capacity-building services, including how many recipients it plans to reach and how the applicant intends to: Measure the quality of the products and services developed to address common high-leverage problems; support recipients in the selection, implementation, and monitoring of evidence-based practices and interventions; and improve knowledge of emerging national education trends.

Final Definitions

The Assistant Secretary establishes the following definitions for the purposes of the Comprehensive Centers program. We may apply one or more of these definitions in any year in which this program is in effect.

Capacity-building services means assistance that strengthens an individual's or organization's ability to engage in continuous improvement and achieve expected outcomes.

The four dimensions of capacity-building services are:

(1) *Human capacity* means development or improvement of individual knowledge, skills, technical expertise, and ability to adapt and be resilient to policy and leadership changes.

(2) *Organizational capacity* means structures that support clear communication and a shared understanding of an organization's visions and goals, and delineated individual roles and responsibilities in functional areas.

(3) *Policy capacity* means structures that support alignment, differentiation, or enactment of local, State, and Federal policies and initiatives.

(4) *Resource capacity* means tangible materials and assets that support alignment and use of Federal, State, private, and local funds.

The three tiers of capacity-building services are:

(1) *Intensive* means assistance often provided on-site and requiring a stable, ongoing relationship between the Regional Center and its clients and recipients, as well as periodic reflection, continuous feedback, and use of evidence-based improvement strategies. This category of capacity-building services should support increased recipient capacity in more than one capacity dimension and result in medium-term and long-term outcomes at one or more system levels.

(2) *Targeted* means assistance based on needs common to multiple clients and recipients and not extensively individualized. A relationship is established between the recipient(s), the National Center, and Regional Center(s) as appropriate. This category of capacity-building services includes one-time, labor-intensive events, such as facilitating strategic planning or hosting national or regional conferences. It can also include less labor-intensive events that extend over a period of time, such as facilitating a series of conference calls on single or multiple topics that are designed around the needs of the recipients. Facilitating communities of practice can also be considered targeted capacity-building services.

(3) *Universal* means assistance and information provided to independent users through their own initiative, involving minimal interaction with National Center staff and including one-time, invited or offered conference presentations by National Center staff. This category of capacity-building services also includes information or products, such as newsletters, guidebooks, policy briefs, or research syntheses, downloaded from the Center's website by independent users. Brief communications by National

Center staff with recipients, either by telephone or email, are also considered universal services.

High-leverage problems means problems that (1) if addressed could result in substantial improvements for many students or for key subgroups of students as defined in ESEA sections 1111(c) and (d); (2) are priorities for education policymakers, particularly at the State level; and (3) require intensive capacity-building services to achieve outcomes that address the problem.

Milestone means an activity that must be completed. Examples include: Identifying key district administrators responsible for professional development, sharing key observations from needs assessment with district administrators and identified stakeholders, preparing a logic model, planning for State-wide professional development, identifying subject matter experts, and conducting train-the-trainer sessions.

Outcomes means effects of receiving capacity-building services. Examples include: 95 percent of district administrators reported increased knowledge; two districts reported improved cross-agency coordination; and three districts reported identification of 2.0 FTE responsible for professional development.

(1) *Short-term outcomes* means effects of receiving capacity-building services after 1 year consistent with the FY 2019 CC Logic Model.

(2) *Medium-term outcomes* means effects of receiving capacity-building services after 2 to 3 years consistent with the FY 2019 CC Logic Model.

(3) *Long-term outcomes* means effects of receiving capacity-building services after 4 or more years consistent with the FY 2019 CC Logic Model.

Outputs means products and services that must be completed. Examples include: Needs assessment, logic model, training modules, evaluation plan, and 12 workshop presentations.

Note: A product output under this program would be considered a deliverable under the open licensing regulations at 2 CFR 3474.20.

Regional educational agency, for the purposes of the Comprehensive Centers program, means ''Tribal Educational Agency'' as defined in ESEA section 6132(b)(3), as well as other educational agencies that serve regional areas.

Service plan project means a series of interconnected capacity-building services designed to achieve recipient outcomes and outputs. A service plan project includes, but is not limited to, a well-defined high-leverage problem, an approach to capacity-building services, intended recipients, key personnel, expected outcomes, expected outputs, and milestones.

Final Performance Measures

Background: We are issuing these final performance measures after providing the public with an opportunity to comment on them through the NPP. Although we are not required to use notice and comment rulemaking to develop or change performance measures, we believed receiving public input on the FY 2019 performance measures may result in better informed performance measures.

Final Performance Measures

Measure 1: The extent to which Comprehensive Center clients are satisfied with the quality, usefulness, and relevance of services provided.

Measure 2: The extent to which Comprehensive Centers provide services and products to a wide range of recipients.

Measure 3: The extent to which Comprehensive Centers demonstrate that capacity-building services were implemented as intended.

Measure 4: The extent to which Comprehensive Centers demonstrate recipient outcomes were met.

Note: This document does *not* solicit applications. In any year in which we choose to use these priorities, requirements, definitions, and performance measures, we invite applications through a notice in the **Federal Register**.

FY 2019 Comprehensive Centers Program Logic Model

Figure 1 is a diagram of the FY 2019 CC Logic Model. A logic model refers to a framework that identifies key project components, inputs, processes, outputs, and short-, mid-, and long-term outcomes and impacts and describes the theoretical and operational relationships among the key project components and relevant outcomes. The FY 2019 CC Logic Model inputs include but are not limited to SEA and LEA staff, implementation and organizational expertise, content area expertise, and Federal funding, staff, and regulations. Processes include capacity-building services that help recipients to develop needs assessments and logic models, select evidence-based practices, and plan for and assist in the implementation of evidence-based practices. Outputs include products, data, and information to assist in the implementation and evaluation of evidence-based practices, such as needs assessments and logic models. Short-term outcomes include increased individual and organizational capacity in four dimensions: Human, organizational, policy, and resource. Mid-term outcomes include improving SEA and LEA capacity to plan, implement, and evaluate school improvement programs in order to improve policies, practices, and systems to implement and evaluate school improvement programs. Long-term outcomes include improved educational opportunities and academic outcomes for disadvantaged and low-income students.

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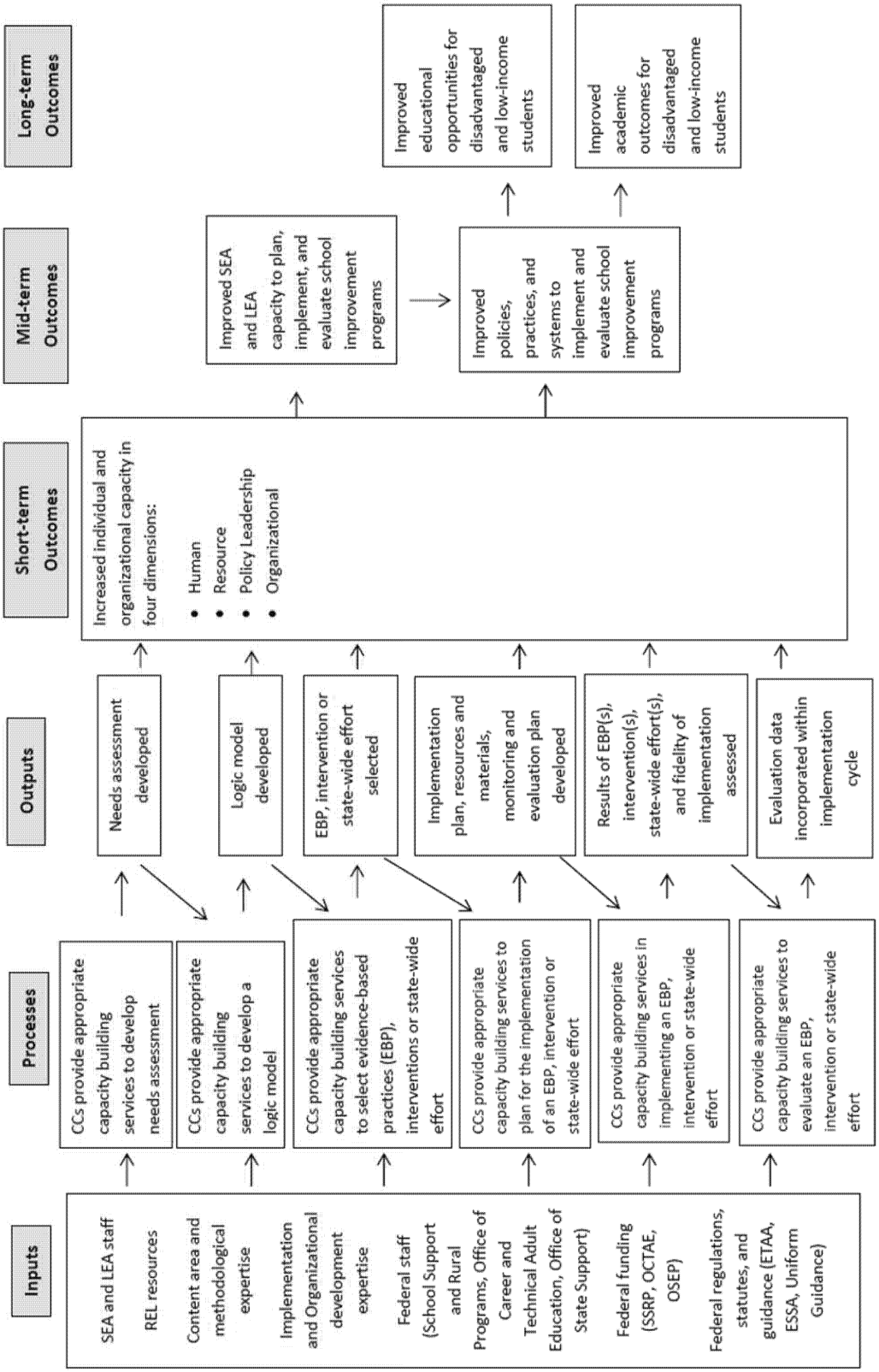
Figure 1

U.S. Department of Education
Comprehensive Centers (CC) Program Logic Model



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Executive Orders 12866, 13563, and 13771

Regulatory Impact Analysis

Under Executive Order 12866, it must be determined whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory

action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

Under Executive Order 13771, for each new regulation that the Department proposes for notice and comment or otherwise promulgates that is a significant regulatory action under Executive Order 12866, and that imposes total costs greater than zero, it must identify two deregulatory actions. For FY 2019, any new incremental costs associated with a new regulation must be fully offset by the elimination of existing costs through deregulatory actions. Because the proposed regulatory action is not significant, the requirements of Executive Order 13771 do not apply.

We have also reviewed this final regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing these final priorities, requirements, definitions, and performance measures only on a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this final regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

These final priorities, requirements, definitions, and performance measures are needed to implement the CC program award process in the manner that the Department believes will best enable the program to achieve its objectives of providing capacity-building services to SEAs, REAs, LEAs, and schools that help improve educational outcomes for all students, close achievement gaps, and improve the quality of instruction.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* Braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov*. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov*. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: April 1, 2019.

Frank Brogan,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2019–06583 Filed 4–3–19; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[EPA–R03–OAR–2009–0238; FRL–9990–18–Region 3]

Outer Continental Shelf Air Regulations; Consistency Update for Delaware

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is updating a portion of the Outer Continental Shelf (OCS) Air Regulations. Requirements applying to OCS sources located within 25 miles of states' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area (COA), as mandated by section 328(a)(1) of the Clean Air Act (CAA). The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources for which Delaware is the designated COA. The State of Delaware's requirements discussed in this document are incorporated by reference into the Code of Federal Regulations and listed in the appendix to the federal OCS air regulations.

DATES: This rule is effective on May 6, 2019. The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of May 6, 2019.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2009–0238. All documents in the docket are listed on the *http://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *http://www.regulations.gov*, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Mrs. Amy Johansen, Office of Permits and State Programs (3AP10), Air Protection Division, U.S. Environmental Protection Agency, Region 3, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2156. Mrs. Johansen can also be reached via electronic mail at *johansen.amy@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On December 3, 2018 (83 FR 62283), EPA published a Notice of Proposed Rulemaking (NPRM) proposing to incorporate various Delaware air pollution control requirements into 40 CFR part 55. EPA received two sets of comments in response to the December 3, 2018 NPRM. The comments did not concern any of the specific issues raised in the NPRM, nor did they address EPA's rationale for the proposed approval of this Consistency Update for OCS requirements. Therefore, EPA is not responding to those comments.

Pursuant to 40 CFR 55.12, consistency reviews will occur (1) at least annually; (2) upon receipt of a Notice of Intent (NOI) under 40 CFR 55.4; or (3) when a state or local agency submits a rule to EPA to be considered for incorporation by reference in 40 CFR part 55. This action is being taken in response to the submittal of a NOI on August 8, 2018, by Deepwater Wind, LLC on behalf of Garden State Offshore Energy, LLC for the proposed installation of a meteorological buoy for the purposes of gathering meteorological data to support development of offshore wind projects.

Section 328(a) of the CAA requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of States' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into 40 CFR part 55 as they exist onshore. This limits EPA's flexibility in deciding which requirements will be incorporated into 40 CFR part 55 and prevents EPA from making substantive changes to the requirements it incorporates. As a result, EPA may be incorporating rules into 40 CFR part 55 that do not conform to all of EPA's state implementation plan (SIP) guidance or certain requirements of the CAA. Consistency updates may result in the inclusion of state or local rules or regulations into 40 CFR part 55, even though the same rules may ultimately be disapproved for inclusion as part of the SIP. Inclusion in the OCS rule does not imply that a rule meets the requirements of the CAA for SIP approval, nor does it imply that the rule will be approved by EPA for inclusion in the SIP.

EPA reviewed Delaware's rules for inclusion in 40 CFR part 55 to ensure that they are rationally related to the attainment or maintenance of Federal or state ambient air quality standards and compliance with part C of title I of the CAA, that they are not designed expressly to prevent exploration and development of the OCS, and that they are potentially applicable to OCS sources. *See* 40 CFR 55.1. EPA has also evaluated the rules to ensure they are not arbitrary or capricious. *See* 40 CFR 55.12(e). In addition, EPA has excluded administrative or procedural rules,[1] and requirements that regulate toxics which are not related to the attainment and maintenance of Federal and state ambient air quality standards. Other specific requirements of the consistency update and the rationale for EPA's proposed action are explained in the December 3, 2018 NPRM and will not be restated here.

II. Final Action

EPA is taking final action to incorporate the rules potentially applicable to OCS sources for which the State of Delaware will be the COA. The rules that EPA is taking final action to incorporate are applicable provisions of Title 7 of the Delaware Administrative Code, as amended through November 11, 2018. The rules that EPA is taking final action to incorporate will replace the rules previously incorporated into 40 CFR part 55 for Delaware. *See* 74 FR 40498 (August 13, 2009).

III. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of Title 7 of the Delaware Administrative Code described in the amendments to 40 CFR part 55 set forth below. EPA has made, and will continue to make, these materials available through *www.regulations.gov* and at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore air pollution control requirements. To comply with this statutory mandate, the EPA must incorporate applicable onshore rules into 40 CFR part 55 as they exist onshore. *See* 42 U.S.C. 7627(a)(1); 40 CFR 55.12. Thus, in promulgating OCS consistency updates, EPA's role is to maintain consistency between OCS regulations and the regulations of onshore areas, provided that they meet the criteria of the CAA. Accordingly, this action simply updates the existing OCS requirements to make them consistent with requirements onshore, without the exercise of any policy direction by EPA. 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 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

[1] Each COA which has been delegated the authority to implement and enforce 40 CFR part 55 will use its administrative and procedural rules as onshore. However, in those instances where EPA has not delegated authority to implement and enforce 40 CFR part 55, EPA will use its own administrative and procedural requirements to implement the substantive requirements. *See* 40 CFR 55.14(c)(4).

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, this rule incorporating by reference sections of Title 7 of the Delaware Administrative Code, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because this action is not approved to apply in Indian country located in the state, and EPA notes that it does not impose substantial direct costs on tribal governments or preemptive tribal law.

Under the provisions of the Paperwork Reduction Act, 44 U.S.C 3501 *et seq.,* an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has approved the information collection requirements contained in 40 CFR part 55 and, by extension, this update to the rules, and has assigned OMB control number 2060–0249. OMB approved the EPA Information Collection Request (ICR) No. 1601.08 on September 18, 2017.[1] The current approval expires September 30, 2020. The annual public reporting and recordkeeping burden for collection of information under 40 CFR part 55 is estimated to average 643 hours per response, using the definition of burden provided in 44 U.S.C. 3502(2).

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. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 3, 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).)

EPA is incorporating the rules potentially applicable to sources for which the State of Delaware is the COA. The rules that EPA is incorporating are applicable provisions of Title 7 of the Delaware Administrative Code, specifically, Air Quality Management Section 1100.

List of Subjects in 40 CFR Part 55

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Outer continental shelf, Ozone, Particulate matter, Permits, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: February 14, 2019.

Cosmo Servidio,

Regional Administrator, Region III.

Part 55 of Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 55—OUTER CONTINENTAL SHELF AIR REGULATIONS

■ 1. The authority citation for part 55 continues to read as follows:

Authority: Section 328 of the Clean Air Act (42 U.S.C. 7401 *et seq.*) as amended by Public Law 101–549.

■ 2. Section 55.14 is amended by revising paragraph (e)(5)(i)(A) to read as follows:

§ 55.14 Requirements that apply to OCS sources located within 25 miles of States' seaward boundaries, by State.

* * * * *

(e) * * *

(5) * * *

(i) * * *

(A) State of Delaware Requirements Applicable to OCS Sources, November 11, 2018.

* * * * *

■ 3. Appendix A to part 55 is amended under ''Delaware'' by revising paragraph (a)(1) and adding paragraph (b) to read as follows:

Appendix A to Part 55—Listing of State and Local Requirements Incorporated by Reference Into Part 55, by State

* * * * *

Delaware

(a) * * *

(1) The following State of Delaware requirements are applicable to OCS Sources, November 11, 2018, State of Delaware—Department of Natural Resources and Environmental Control. The following sections of Title 7 Delaware Administrative Code 1100—Air Quality Management Section:

7 DE Admin. Code 1101: Definitions and Administrative Principals

Section 1.0: General Provisions (Effective 02/01/1981)
Section 2.0: Definitions (Effective 12/11/2016)
Section 3.0: Administrative Principals (Effective 11/11/2013)
Section 4.0: Abbreviations (Effective 02/01/1981)

7 DE Admin. Code 1102: Permits

Section 1.0: General Provisions (Effective 06/11/2006)
Section 2.0: Applicability (Effective 06/11/2006)
Section 3.0: Application/Registration Prepared by Interested Party (Effective 06/01/1997)
Section 4.0: Cancellation of Construction Permits (Effective 06/01/1997)
Section 5.0: Action on Applications (Effective 06/01/1997)
Section 6.0: Denial, Suspension or Revocation of Operating Permits (Effective 06/11/2006)
Section 7.0: Transfer of Permit/Registration Prohibited (Effective 06/01/1997)
Section 8.0: Availability of Permit/Registration (Effective 06/01/1997)
Section 9.0: Registration Submittal (Effective 06/01/1997)
Section 10.0: Source Category Permit Application (Effective 06/01/1997)

[1] OMB's approval of the ICR can be viewed at *www.reginfo.gov.*

Section 11.0: Permit Application (Effective 06/11/2006)
Section 12.0: Public Participation (Effective 06/11/2006)
Section 13.0: Department Records (Effective 06/01/1997)
Appendix A (Effective 06/11/2006)

7 DE Admin. Code 1103: Ambient Air Quality Standards

Section 1.0: General Provisions (Effective 01/11/2014)
Section 2.0: General Restrictions (Effective 02/01/1981)
Section 3.0: Suspended Particulates (Effective 02/01/1981)
Section 4.0: Sulfur Dioxide (Effective 01/11/2014)
Section 5.0: Carbon Monoxide (Effective 02/01/1981)
Section 6.0: Ozone (Effective 01/11/2014)
Section 7.0: Hydrocarbons (Effective 02/01/1981)
Section 8.0: Nitrogen Dioxide (Effective 01/11/2014)
Section 9.0: Hydrogen Sulfide (Effective 02/01/1981)
Section 10.0: Lead (Effective 01/11/2014)
Section 11.0: PM_{10} and $PM_{2.5}$ Particulates (Effective 01/11/2014)

7 DE Admin. Code 1104: Particulate Emissions From Fuel Burning Equipment

Section 1.0: General Provisions (Effective 01/11/2017)
Section 2.0: Emission Limits (Effective 01/11/2017)

7 DE Admin. Code 1105: Particulate Emissions From Industrial Process Operations

Section 1.0: General Provisions (Effective 01/11/2017)
Section 2.0: General Restrictions (Effective 01/11/2017)
Section 3.0: Restrictions on Hot Mix Asphalt Batching Operations (Effective 02/01/1981)
Section 4.0: Restrictions on Secondary Metal Operations (Effective 01/11/2017)
Section 5.0: Restrictions on Petroleum Refining Operations (Effective 01/11/2017)
Section 6.0: Restrictions on Prill Tower Operations (Effective 02/01/1981)
Section 7.0: Control of Potentially Hazardous Particulate Matter (Effective 02/01/1981)

7 DE Admin. Code 1106: Particulate Emissions From Construction and Materials Handling

Section 1.0: General Provisions (Effective 02/01/1981)
Section 2.0: Demolition (Effective 02/01/1981)
Section 3.0: Grading, Land Clearing, Excavation and Use of Non-Paved Roads (Effective 02/01/1981)
Section 4.0: Material Movement (Effective 02/01/1981)
Section 5.0: Sandblasting (Effective 02/01/1981)
Section 6.0: Material Storage (Effective 02/01/1981)

7 DE Admin. Code 1107: Emissions From Incineration of Noninfectious Waster

Section 1.0: General Provisions (Effective 10/13/1989)
Section 2.0: Restrictions (Effective 10/13/1989)

7 DE Admin. Code 1108: Sulfur Dioxide Emissions From Fuel Burning Equipment

Section 1.0: General Provisions (Effective 07/11/2013)
Section 2.0: Limit on Sulfur Content of Fuel (Effective 07/11/2013)
Section 3.0: Emission Control in Lieu of Sulfur Content Limits of 2.0 of This Regulation (Effective 07/11/2013)
Section 4.0: Sampling and Testing Methods and Requirements (Effective 07/11/2013)
Section 5.0: Recordkeeping and Reporting (Effective 07/11/2013)

7 DE Admin. Code 1109: Emissions of Sulfur Compounds From Industrial Operations

Section 1.0: General Provisions (Effective 05/09/1985)
Section 2.0: Restrictions on Sulfuric Acid Manufacturing Operations (Effective 02/01/1981)
Section 3.0: Restriction on Sulfuric Recovery Operations (Effective 02/01/1981)
Section 4.0: Stack Height Requirements (Effective 02/01/1981)

7 DE Admin. Code 1110: Control of Sulfur Dioxide Emissions—Kent and Sussex Counties

Section 1.0: Requirements for Existing Sources of Sulfur Dioxide (Effective 01/18/1982)
Section 2.0: Requirements for New Sources of Sulfur Dioxide (Effective 02/01/1981)

7 DE Admin. Code 1111: Carbon Monoxide Emissions From Industrial Process Operations New Castle County

Section 1.0: General Provisions (Effective 02/01/1981)
Section 2.0: Restrictions on Petroleum Refining Operations (Effective 02/01/1981)

7 DE Admin. Code 1112: Control of Nitrogen Oxide Emissions

Section 1.0: Applicability (Effective 11/24/1993)
Section 2.0: Definitions (Effective 11/24/1993)
Section 3.0: Standards (Effective 11/24/1993)
Section 4.0: Exemptions (Effective 11/24/1993)
Section 5.0: Alternative and Equivalent RACT Determinations (11/24/1993)
Section 6.0: RACT Proposals (11/24/1993)
Section 7.0: Compliance Certification, Recordkeeping, and Reporting Requirements (Effective 11/24/1993)

7 DE Admin. Code 1113: Open Burning

Section 1.0: Purpose (Effective 04/11/2007)
Section 2.0: Applicability (Effective 04/11/2007)
Section 3.0: Definitions (Effective 04/11/2007)
Section 4.0: Prohibitions and Related Provisions (Effective 04/11/2007)
Section 5.0: Season and Time Restrictions (Effective 04/11/2007)
Section 6.0: Allowable Open Burning (Effective 04/11/2007)
Section 7.0: Exemptions (Effective 04/11/2007)

7 DE Admin. Code 1114: Visible Emissions

Section 1.0: General Provisions (Effective 11/11/2013)
Section 2.0: Requirements (Effective 05/11/2018)
Section 3.0: Alternate Opacity Requirements (Effective 07/17/1984)
Section 4.0: Compliance With Opacity Standards (Effective 07/17/1984)

7 DE Admin. Code 1115: Air Pollution Alert and Emergency Plan

Section 1.0: General Provisions (Effective 07/17/1984)
Section 2.0: Stages and Criteria (Effective 03/29/1988)
Section 3.0: Required Actions (Effective 02/01/1981)
Section 4.0: Standby Plans (Effective 02/01/1981)

7 DE Admin. Code 1116: Sources Having an Interstate Air Pollution Potential

Section 1.0: General Provisions (Effective 02/01/1981)
Section 2.0: Limitations (Effective 02/01/1981)
Section 3.0: Requirements (Effective 02/01/1981)

7 DE Admin. Code 1117: Source Monitoring, Record Keeping and Reporting

Section 1.0: Definitions and Administrative Principals (Effective 01/11/1993)
Section 2.0: Sampling and Monitoring (Effective 07/17/1984)
Section 3.0: Minimum Emissions Monitoring Requirements For Existing Sources (Effective 07/17/1984)
Section 4.0: Performance Specifications (Effective 07/17/1984)
Section 5.0: Minimum Data Requirements (Effective 07/17/1984)
Section 6.0: Data Reduction (Effective 07/17/1984)
Section 7.0: Emission Statement (Effective 01/11/1993)

7 DE Admin. Code 1120: New Source Performance Standards

Section 1.0: General Provisions (Effective 12/07/1988)
Section 2.0: Standards of Performance for Fuel Burning Equipment (Effective 04/18/1983)
Section 3.0: Standards of Performance for Nitric Acid Plants (Effective 04/18/1983)
Section 5.0: Standards of Performance for Asphalt Concrete Plants (Effective 04/18/1983)
Section 6.0: Standards of Performance for Incinerators (Effective 04/18/1983)
Section 7.0: Standards of Performance for Sewage Treatment Plants (Effective 04/18/1983)
Section 8.0: Standards of Performance for Sulfuric Acid Plants (Effective 04/18/1983)
Section 9.0: Standards of Performance for Electric Utility Steam Generating Units for Which Construction is Commenced

After September 18, 1978 (Effective 04/18/1983)
Section 10.0: Standards of Performance for Stationary Gas Turbines (Effective 11/27/1985)
Section 11.0: Standards of Performance for Petroleum Refineries (Effective 11/27/1985)
Section 12.0: Standards of Performance for Steel Plants: Electric Arc Furnaces (Effective 11/27/1985)
Section 20.0: Standards of Performance for Bulk Gasoline Terminals (Effective 11/27/1985)
Section 22.0: Standards of Performance for Equipment Leaks at Petroleum Refineries (Effective 11/27/1985)
Section 27.0: Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced after July 23, 1984 (Effective 12/07/1988)
Section 28.0: Standards of Performance for Municipal Solid Waste Landfills (Effective 04/11/1998)
Section 30.0: Standards of Performance for Municipal Solid Waste Landfills after July 11, 2017 (Effective 07/11/2017)

7 DE Admin. Code 1122: Restriction on Quality of Fuel in Fuel Burning Equipment

Section 1.0: Prohibition of Waste Oil (Effective 11/27/1985)

7 DE Admin. Code 1124: Control of Volatile Organic Compounds

Section 1.0: General Provisions (Effective 01/11/2017)
Section 2.0: Definitions (Effective 04/11/2010)
Section 3.0: Applicability (Effective 01/11/1993)
Section 4.0: Compliance, Certification, Recordkeeping, and Reporting Requirements for Coating Sources (Effective 11/29/1994)
Section 5.0: Compliance, Certification, Recordkeeping, and Reporting Requirements for non-Coating Sources (Effective 01/11/1993)
Section 6.0: General Recordkeeping (Effective 01/11/1993)
Section 7.0: Circumvention (Effective 01/11/1993)
Section 8.0: Handling, Storage, and Disposal of Volatile Organic Compounds (VOCs) (Effective 03/11/2011)
Section 9.0: Compliance, Permits, Enforceability (Effective 01/11/1993)
Section 10.0: Aerospace Coatings (Effective 02/11/2003)
Section 11.0: Mobile Equipment Repair and Refinishing (Effective 10/11/2010)
Section 12.0: Surface Coating of Plastic Parts (Effective 10/11/2011)
Section 13.0: Automobile and Light-Duty Truck Coating Operations (Effective 03/11/2011)
Section 14.0: Can Coating (Effective 01/11/1993)
Section 15.0: Coil Coating (Effective 01/11/1993)
Section 16.0: Paper, Film, and Foil Coating (Effective 03/11/2011)
Section 17.0: Fabric Coating (Effective 01/11/1993)
Section 18.0: Vinyl Coating (Effective 01/11/1993)
Section 19.0: Coating of Metal Furniture (Effective 10/11/2011)
Section 20.0: Coating of Large Appliances (Effective 10/11/2011)
Section 21.0: Coating of Magnet Wire (Effective 11/29/1994)
Section 22.0: Coating of Miscellaneous Metal Parts (Effective 10/11/2011)
Section 23.0: Coating of Flat Wood Paneling (Effective 03/11/2011)
Section 24.0: Bulk Gasoline Plants (Effective 01/11/1993)
Section 25.0: Bulk Gasoline Terminals (Effective 11/29/1994)
Section 26.0: Gasoline Dispensing Facility Stage I Vapor Recovery (Effective 01/11/2002)
Section 27.0: Gasoline Tank Trucks (Effective 01/11/1993)
Section 28.0: Petroleum Refinery Sources (Effective 01/11/1993)
Section 29.0: Leaks from Petroleum Refinery Equipment (Effective 11/29/1994)
Section 30.0: Petroleum Liquid Storage in External Floating Roof Tanks (Effective 11/29/1994)
Section 31.0: Petroleum Liquid Storage in Fixed Roof Tanks (Effective 11/29/1994)
Section 32.0: Leaks from Natural Gas/Gasoline Processing Equipment (Effective 11/29/1994)
Section 33.0: Solvent Cleaning and Drying (Effective 11/11/2001)
Section 34.0: Cutback and Emulsified Asphalt (Effective 01/11/1993)
Section 35.0: Manufacture of Synthesized Pharmaceutical Products (Effective 11/29/1994)
Section 36.0: Vapor Emission Control at Gasoline Dispensing Facilities (Effective 09/11/2015)
Section 37.0: Graphic Arts Systems (Effective 03/11/2011)
Section 38.0: Petroleum Solvent Dry Cleaners (Effective 01/11/1993)
Section 40.0: Leaks from Synthetic Organic Chemical, Polymer, and Resin Manufacturing Equipment (Effective 01/11/1993)
Section 41.0: Manufacture of High-Density Polyethylene, Polypropylene, and Polystyrene Resins (Effective 01/11/1993)
Section 42.0: Air Oxidation Processes in the Synthetic Organic Chemical Manufacturing Industry (Effective 01/11/1993)
Section 43.0: Bulk Gasoline Marine Tank Vessel Loading Facilities (Effective 08/08/1994)
Section 44.0: Batch Processing Operations (Effective 11/29/1994)
Section 45.0: Industrial Cleaning Solvents (Effective 03/11/2011)
Section 46.0: Crude Oil Lightering Operations (Effective 05/11/2007)
Section 47.0: Offset Lithographic Printing (Effective 04/11/2011)
Section 48.0: Reactor Processes and Distillation Operations in the Synthetic Organic Chemical Manufacturing Industry (Effective 11/29/1994)
Section 49.0: Control of Volatile Organic Compound Emissions from Volatile Organic Liquid Storage Vessels (Effective 11/29/1994)
Section 50.0: Other Facilities that Emit Volatile Organic Compounds (VOCs) (Effective 11/29/1994)

7 DE Admin. Code 1124: Control of Organic Compound Emissions—Appendices

Appendix A General Provisions: Test Methods and Compliance Procedures (Effective 11/29/1994)
Appendix B: Determining the Volatile Organic Compound (VOC) Content of Coatings and Inks (Effective 11/29/1994)
Appendix C: Alternative Compliance Methods for Surface Coating (Effective 11/29/1994)
Appendix D: Emission Capture and Destruction or Removal Efficiency and Monitoring Requirements (Effective 11/29/1994)
Method 30: Criteria for and Verification of a Permanent or Temporary Total Enclosure (Effective 11/29/1994)
Method 30A: Volatile Organic Compounds Content in Liquid Input Stream (Effective 11/29/1994)
Method 30B: Volatile Organic Compounds Emissions in Captured Stream (Effective 11/29/1994)
Method 30C: Volatile Organic Compounds Emissions in Captured Stream (Dilution Technique) (Effective 11/29/1994)
Method 30D: Volatile Organic Compounds Emissions in Fugitive Stream from Temporary Total Enclosure (Effective 11/29/1994)
Method 30E: Volatile Organic Compounds Emissions in Fugitive Stream from Building Enclosure (Effective 11/29/1994)
Appendix E: Determining the Destruction or Removal Efficiency of a Control Device (Effective 11/29/1994)
Appendix F: Leak Detection Methods for Volatile Organic Compounds (VOCs) (Effective 11/29/1994)
Appendix G: Performance Specifications for Continuous Emissions Monitoring of Total Hydrocarbons (Effective 11/29/1994)
Appendix H: Quality Control Procedures for Continuous Emission Monitoring Systems (CEMS) (Effective 11/29/1994)
Appendix I: Method to Determine Length of Rolling Period for Liquid/Liquid Material Balance (Effective 11/29/1994)
Appendix K: Emissions Estimation Methodologies (Effective 11/29/1994)
Appendix L: Method to Determine Total Organic Carbon for Offset Lithographic Solutions (Effective 11/29/1994)
Appendix M: Test Method for Determining the Performance of Alternative Cleaning Fluids (Effective 11/29/1994)

7 DE Admin. Code 1125: Requirements for Preconstruction Review

Section 1.0: General Provisions (Effective 12/11/2016)
Section 2.0: Emission Offset Provisions (EOP) (Effective 02/11/2012) [1]

[1] On October 20, 2016, EPA disapproved Delaware's emissions offset provisions. EPA last

Section 3.0: Prevention of Significant Deterioration of Air Quality (Effective 12/11/2016)
Section 4.0: Minor New Source Review (MNSR) (Effective 12/11/2016)

7 DE Admin. Code 1127: Stack Heights

Section 1.0: General Provisions (Effective 07/06/1982)
Section 2.0: Definitions Specific to this Regulation (Effective 12/07/1988)
Section 3.0: Requirements for Existing and New Sources (Effective 02/18/1987)
Section 4.0: Public Notification (Effective 02/18/1987)

7 DE Admin. Code 1129: Emissions From Incineration of Infectious Waste

Section 1.0: General Provisions (Effective 10/13/1989)
Section 2.0: Exemptions (Effective 10/13/1989)
Section 3.0: Permit Requirements (Effective 10/13/1989)
Section 4.0: Methods of Treatment and Disposal (Effective 10/13/1989)
Section 5.0: Recordkeeping and Reporting Requirements (Effective 10/13/1989)
Section 6.0: Evidence of Effectiveness of Treatment (Effective 10/13/1989)
Section 7.0: Incineration (Effective 10/13/1989)

7 DE Admin. Code 1130: Title V Operating Permit Program

Section 1.0: Program Overview (Effective 12/11/2010)
Section 2.0: Definitions (Effective 11/15/1993)
Section 3.0: Applicability (Effective 11/15/1993)
Section 5.0: Permit Applications (Effective 11/15/1993)
Section 6.0: Permit Contents (Effective 12/11/2000)
Section 7.0: Permit Issuance, Renewal, Reopening, And Revisions (Effective 12/11/2000)
Section 8.0: Permit Review by EPA and Affected States (Effective 11/15/1993)
Section 9.0: Permit Fees (Effective 11/15/1993)
Appendix A: Insignificant Activities (Effective 11/15/1993)

7 DE Admin. Code 1132: Transportation Conformity

Section 1.0: Purpose (Effective 11/11/2007)
Section 2.0: Definitions (Effective 11/11/2007)
Section 3.0: Consultation (Effective 11/11/2007)
Section 4.0: Written Commitments for Control and Mitigation Measures (Effective 11/11/2007)

approved Regulation 1125, Section 2.0 for the Delaware SIP on October 2, 2012, these emissions offset provisions address requirements in CAA 173(c)(1), 40 CFR 51.165, and part 51, appendix S, section IV.D. The State effective date of this version of Regulation 1125, Section 2.0, Emission Offset Provisions was February 11, 2012, and it is this version of Regulation 1125, Section 2.0 that Delaware is required to implement and EPA incorporated by reference into 40 CFR part 55.

7 DE Admin Code 1134: Emission Banking and Trading Program

Section 1.0: Program Overview (Effective 10/06/1997)
Section 2.0: Definitions (Effective 10/06/1997)
Section 3.0: Applicability (Effective 10/06/1997)
Section 4.0: Generating an Emission Reduction (Effective 10/06/1997)
Section 5.0: Application for Certification of an Emission Reduction as an ERC (Effective 10/06/1997)
Section 6.0: Source Baseline (Effective 10/06/1997)
Section 7.0: Post-Reduction Emission Rate (Effective 10/06/1997)
Section 8.0: Certification of an Emission Reduction (Effective 11/11/2018)
Section 9.0: Trading and Use of ERCs (Effective 10/06/1997)
Section 10.0: Record Keeping Requirements (Effective 10/06/1997)
Section 11.0: ERC Banking System (Effective 10/06/1997)
Section 12.0: Fees (Effective 10/06/1997)
Section 13.0: Enforcement (Effective 10/06/1997)
Section 14.0: Program Evaluation and Individual Audits (Effective 10/06/1997)

7 DE Admin. Code 1135: Conformity of General Federal Actions to the State Implementation Plans

Section 1.0: Purpose (Effective 08/14/1996)
Section 2.0: Definitions (Effective 08/14/1996)
Section 3.0: Applicability (Effective 08/14/1996)
Section 4.0: Conformity Analysis (Effective 08/14/1996)
Section 5.0: Reporting Requirements (Effective 08/14/1996)
Section 6.0: Public Participation and Consultation (Effective 08/14/1996)
Section 7.0: Frequency of Conformity Determinations (Effective 08/14/1996)
Section 8.0: Criteria for Determining Conformity of General Federal Actions (Effective 08/14/1996)
Section 9.0: Procedures for Conformity Determinations of General Federal Actions (Effective 08/14/1996)
Section 10.0: Mitigation of Airy Quality Impacts (Effective 08/14/1996)
Section 11.0: Savings Provision (Effective 08/14/1996)

7 DE Admin. Code 1140: Delaware Low Emission Vehicle Program

Section 1.0: Purpose (Effective 12/11/2013)
Section 2.0: Applicability (Effective 12/11/2013)
Section 3.0: Definitions (Effective 03/11/2018)
Section 4.0: Emission Certification Standards (Effective 12/11/2013)
Section 5.0: New Vehicle Emission Requirements (Effective 03/11/2018)
Section 6.0: Manufacturer Fleet Requirements (Effective 12/11/2013)
Section 7.0: Warranty (Effective 03/11/2018)
Section 8.0: Reporting and Record-Keeping Requirements (Effective 12/11/2013)
Section 9.0: Enforcement (Effective 12/11/2013)
Section 10.0: Incorporation by Reference (Effective 03/11/2018)
Section 11.0: Document Availability (Effective 03/11/2018)
Section 12.0: Severability (Effective 12/11/2013)

7 DE Admin. Code 1141: Limiting Emissions of Volatile Organic Compounds From Consumer and Commercial Products

Section 1.0: Architectural and Industrial Maintenance Coatings (Effective 12/11/2016)
Section 2.0: Consumer Products (Effective 02/11/2016)
Section 3.0: Portable Fuel Containers (Effective 04/11/2010)
Section 4.0: Adhesives and Sealants (Effective 04/11/2009)

7 DE Admin. Code 1142: Specific Emission Control Requirements

Section 1.0: Control of NO_X Emissions from Industrial Boilers (Effective 12/12/2001)

7 DE Admin. Code 1144: Control of Stationary Generator Emissions

Section 1.0: General (Effective 01/11/2006)
Section 2.0: Definitions (Effective 01/11/2006)
Section 3.0: Emissions (Effective 01/11/2006)
Section 4.0: Operating Requirements (Effective 01/11/2006)
Section 5.0: Fuel Requirements (Effective 01/11/2006)
Section 6.0: Record Keeping and Reporting (Effective 01/11/2006)
Section 7.0: Emissions Certification, Compliance, and Enforcement (Effective 01/11/2006)
Section 8.0: Credit for Concurrent Emissions Reductions (Effective 01/11/2006)
Section 9.0: DVFA Member Companies (Effective 01/11/12006)

7 DE Admin. Code 1145: Excessive Idling of Heavy Duty Vehicles

Section 1.0: Applicability (Effective 04/11/2005)
Section 2.0: Definitions (Effective 04/11/2005)
Section 3.0: Severability (Effective 04/11/2005)
Section 4.0: Operational Requirements for Heavy Duty Motor Vehicles (Effective 04/11/2005)
Section 5.0: Exemptions (Effective 04/11/2005)
Section 6.0: Enforcement and Penalty (Effective 04/11/2005)

7 DE Admin. Code 1146: Electric Generating Unit (EGU) Milti-Pollutant Regulation

Section 1.0: Preamble (Effective 12/11/2006)
Section 2.0: Applicability (Effective 12/11/2006)
Section 3.0: Definitions (Effective 12/11/2006)
Section 4.0: NO_X Emissions Limitations (Effective 12/11/2006)
Section 5.0: SO_2 Emissions Limitations (Effective 12/11/2006)
Section 6.0: Mercury Emissions Limitations (Effective 12/11/2006)
Section 7.0: Record Keeping and Reporting (Effective 12/11/2006)

Section 8.0: Compliance Plan (Effective 12/11/2006)
Section 9.0: Penalties (Effective 12/11/2006)

7 DE Admin. Code 1147: CO_2 Budget Trading Program

Section 1.0: CO_2 Budget Trading Program General Provisions (Effective 12/11/2013)
Section 2.0: CO_2 Authorized Account Representative for CO_2 Budget Source (Effective 11/11/2008)
Section 3.0: Permits (Effective 11/11/2018)
Section 4.0: Compliance Certification (Effective 12/11/2013)
Section 5.0: CO_2 Allowance Allocations (Effective 12/11/2013)
Section 6.0: CO_2 Allowance Tracking System (Effective 12/11/2013)
Section 7.0: CO_2 Allowance Transfers (Effective 12/11/2013)
Section 8.0: Monitoring and Reporting (Effective 12/11/2013)
Section 9.0: Auction of CO_2 CCR allowances (Effective 12/11/2013)
Section 10.0: CO_2 Emissions Offset Projects (Effective 12/11/2013)
Section 11.0: CO_2 Emissions Auction (Effective 12/11/2013)

7 DE Admin. Code 1148: Control of Stationary Combustion Turbine Electric Generating Unit Emissions

Section 1.0: Purpose (Effective 07/11/2007)
Section 2.0: Applicability (Effective 07/11/2007)
Section 3.0: Definitions (Effective 07/11/2007)
Section 4.0: NO_X Emissions Limitations (Effective 07/11/2007)
Section 5.0: Monitoring and Reporting (Effective 07/11/2007)
Section 6.0: Recordkeeping (Effective 07/11/2007)
Section 7.0: Penalties (Effective 07/11/2007)

(2) [Reserved]

(b) Local requirements.

* * * * *

[FR Doc. 2019–06488 Filed 4–3–19; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2019–0002]

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated in the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. FEMA included flood hazard mapping data dissemination determinations as part of the NFIP Nationwide Programmatic Environmental Impact Statement, published on November 3, 2017, and completed in accordance with the Council on Environmental Quality's National Environmental Policy Act implementing regulations in 40 CFR 1500–1508 and therefore has determined that this action will not have a significant effect on the human environment.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This final rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This final rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

David I. Maurstad,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) modified	Communities affected
Erie County, New York (All Jurisdictions) Docket No.: FEMA–B–1128			
Berricks Creek	Approximately 45 feet upstream of the I–90 culvert (upstream face).	+753	Town of Hamburg.
	Approximately 230 feet upstream of the I–90 culvert (upstream face).	+753	
Big Sister Creek	Approximately 5,475 feet downstream of Cain Road/Evans/Eden town boundary.	+732	Town of Eden.
	Approximately 1,875 feet downstream of Cain Road/Evans/Eden town boundary.	+735	
Buffalo River	At the confluence with Lake Erie	+581	City of Buffalo.
	At the upstream face of the railroad bridge	+581	
Cayuga Creek	Approximately 80 feet upstream of Clinton Street	+593	Town of Cheektowaga, Town of Lancaster, Town of West Seneca, Village of Depew, Village of Lancaster.
	At the Lancaster/Alden town boundary	+742	
Cazenovia Creek	At the confluence with the Buffalo River	+583	City of Buffalo.
	At the downstream face of Southside Parkway	+583	
Cazenovia Creek East Branch	Approximately 500 feet downstream of Center Street	+874	Village of East Aurora.
	Approximately 10 feet downstream of Center Street (at the Town of Aurora/Village of East Aurora boundary).	+874	
Cazenovia Creek East Branch	Approximately 565 feet upstream of North Main Street (State Route 16).	+1,063	Town of Holland.
	Approximately 1,930 feet upstream of North Main Street (State Route 16).	+1,076	
Eighteenmile Creek	Approximately 230 feet upstream of the confluence with Eighteenmile Creek South Branch Tributary.	+650	Town of Hamburg.
	Approximately 425 feet downstream of South Creek Road	+714	
Eighteenmile Creek	Approximately 5,280 feet upstream of U.S. Route 62 (Pierce Avenue).	+766	Village of Hamburg.
	Approximately 5,750 feet upstream of U.S. Route 62 (Pierce Avenue).	+767	
Ellicott Creek	Approximately 1,035 feet upstream of Colvin Boulevard	+572	Town of Amherst, Town of Tonawanda.
	Approximately 1,435 feet northeast of the intersection of Lawrence Bell Drive and Cartwright Drive.	+695	
Ellicott Creek	At the downstream Town of Alden/Village of Alden boundary.	+810	Village of Alden.
	At the upstream Town of Alden/Village of Alden boundary	+815	
Ellicott Creek	At Lynbrook Drive	+572	City of Tonawanda, Town of Tonawanda.
	Approximately 150 feet west of the intersection of Willow Grove Street and Parker Boulevard..	+572	
Lake Erie	At the southern corporate limits of the Town of Brant	+579	City of Buffalo, City of Lackawanna, Town of Brant.
	At the confluence with Black Rock Canal	+581	
Little Buffalo Creek	At the confluence with Cayuga Creek	+686	Town of Lancaster.
	At the downstream face of the dam, upstream of Bowen Road.	+688	
Ransom Creek	At the upstream face of the Glen Oak Drive culvert	+582	Town of Amherst, Town of Clarence.
	Approximately 115 feet upstream of Kraus Road	+652	
Scajaquada Creek	Approximately 15 feet downstream of the I–190 exit ramp	+579	City of Buffalo.
	At the downstream face of the Private Road culvert (downstream of Main Street).	+610	
Slate Bottom Creek	At the confluence with Cayuga Creek	+600	Town of Cheektowaga, Town of Elma, Town of Lancaster.
	Approximately 175 feet upstream of Brunk Road	+715	
Smokes Creek	At the confluence with Lake Erie	+581	City of Lackawanna.
	Approximately 550 feet upstream of the Bethlehem Steel Vehicular Bridge.	+581	
Smokes Creek Northwest Branch.	Approximately 1,475 feet downstream of Berg Road	+662	Town of West Seneca.
	Approximately 2,950 feet upstream of Berg Road	+706	
Smokes Creek Northwest Branch.	Approximately 380 feet upstream of Highland Avenue	+870	Village of Orchard Park.
	Approximately 1,615 feet upstream of Highland Avenue	+872	
Smokes Creek Overland Flow	At the upstream face of the Lake Shore Road culvert	+581	Town of Hamburg, Village of Blasdell.
	At the upstream Village of Blasdell/City of Lackawanna boundary.	+591	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) modified	Communities affected
Smokes Creek South Branch ...	Approximately 115 feet upstream of Recreational Park Access Drive/Town of Orchard Park corporate limits.	+813	Town of Orchard Park.
	Approximately 630 feet north of the intersection of Elmhurst Drive and Woodland Drive/Town of Orchard Park corporate limits.	+845	
Tannery Brook	Approximately 195 feet upstream of Fillmore Avenue/Town of Aurora downstream corporate limits.	+935	Town of Aurora.
	Approximately 170 feet downstream of Brooklea Drive/Town of Aurora upstream corporate limits.	+936	
Tonawanda Creek	At Mary Vista Court extended	+572	Town of Amherst, Town of Tonawanda.
	At the downstream face of the footbridge near the intersection of Creekside Road and Niagara Falls Boulevard.	+574	
Unnamed Tributary to Slate Bottom Creek.	At the confluence with Slate Bottom Creek	+609	Town of Cheektowaga.
	Approximately 450 feet upstream of Towers Boulevard	+609	

ADDRESSES

City of Buffalo
Maps are available for inspection at Buffalo City Hall, 65 Niagara Square, Buffalo, NY 14202.

City of Lackawanna
Maps are available for inspection at City Hall, 714 Ridge Road, Lackawanna, NY 14218.

City of Tonawanda
Maps are available for inspection at Tonawanda City Hall, 200 Niagara Street, Tonawanda, NY 14150.

Town of Amherst
Maps are available for inspection at the Amherst Town Hall, 5583 Main Street, Williamsville, NY 14221.

Town of Aurora
Maps are available for inspection at the Aurora Town Hall, 5 South Grove Street, East Aurora, NY 14052.

Town of Brant
Maps are available for inspection at the Town Hall, 1294 Brant-North Collins Road, Brant, NY 14027.

Town of Cheektowaga
Maps are available for inspection at the Town Hall, 3301 Broadway, Cheektowaga, NY 14227.

Town of Clarence
Maps are available for inspection at the Town Hall, 1 Town Place, Clarence, NY 14031.

Town of Eden
Maps are available for inspection at the Town Hall, 2795 East Church Street, Eden, NY 14057.

Town of Elma
Maps are available for inspection at the Town Hall, 1600 Bowen Road, Elma, NY 14059.

Town of Hamburg
Maps are available for inspection at the Hamburg Town Hall, 6100 South Park Avenue, Hamburg, NY 14075.

Town of Holland
Maps are available for inspection at the Town Hall, 47 Pearl Street, Holland, NY 14080.

Town of Lancaster
Maps are available for inspection at the Lancaster Town Hall, 21 Central Avenue, Lancaster, NY 14086.

Town of Orchard Park
Maps are available for inspection at the Town Hall, 4295 South Buffalo Road, Orchard Park, NY 14127.

Town of Tonawanda
Maps are available for inspection at the Tonawanda Town Hall, 2919 Delaware Avenue, Tonawanda, NY 14217.

Town of West Seneca
Maps are available for inspection at the Town Hall, 1250 Union Road, West Seneca, NY 14224.

Village of Alden
Maps are available for inspection at the Village Hall, 13336 Broadway, Alden, NY 14004.

Village of Blasdell
Maps are available for inspection at the Village Hall, 121 Miriam Avenue, Blasdell, NY 14219.

Village of Depew
Maps are available for inspection at the Village Hall, 85 Manitou Street, Depew, NY 14043.

Village of East Aurora
Maps are available for inspection at the Village Hall, 571 Main Street, East Aurora, NY 14052.

Village of Hamburg
Maps are available for inspection at the Hamburg Village Hall, 100 Main Street, Hamburg, NY 14075.

Village of Lancaster
Maps are available for inspection at the Lancaster Village Hall, 5423 Broadway, Lancaster, NY 14086.

Village of Orchard Park
Maps are available for inspection at the Orchard Park Village Hall, 4295 South Buffalo Road, Orchard Park, NY 14127.

[FR Doc. 2019–06588 Filed 4–3–19; 8:45 am]
BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[GN Docket Nos. 18–122, 17–183, RM–11791, RM–11778; FCC 18–91]

Expanding Flexible Use of the 3.7 to 4.2 GHz Band

AGENCY: Federal Communications Commission.

ACTION: Final action; information collection approval; announcement of effective date.

SUMMARY: In this document, the Commission announces that the Office of Management and Budget (OMB) has approved the request for the information collection requirements contained in the Commission's *Expanding Flexible Use of the 3.7 to 4.2 GHz Band,* Order. This document is consistent with the *Order,* which stated that the Commission would publish a document in the **Federal Register** announcing OMB approval and the effective date of these rules.

DATES: The Earth Station and Space Station Information Collections in paragraphs 7–12 of the Order published at 83 FR 42043, August 20, 2018, are effective April 4, 2019.

FOR FURTHER INFORMATION CONTACT: Cathy Williams by email at *Cathy.Williams@fcc.gov* and telephone at (202) 418–2918.

SUPPLEMENTARY INFORMATION: This document announces that, on January 28, 2019, OMB approved the request that the Commission submitted pertaining to the revisions to information collection requirements contained in the Commission's *Order,* FCC 18–91, published at 83 FR 42043, August 20, 2018. The OMB Control Number is 3060–0678. The changes to OMB control number 3060– 0678 modified the burden hours and annual costs to the information collection. The Commission publishes this document as an announcement of the effective date of the rules.

Synopsis: As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that OMB approved changes to information collection requirements contained in 83 FR 42043. Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number. The OMB Control Number is 3060–0678. The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, and 44 U.S.C. 3507.

The total annual reporting burdens and costs for the respondents are as follows:

OMB Control Number: 3060–0678.

OMB Approval Date: January 28, 2018.

OMB Expiration Date: January 31, 2022.

Title: Part 25 of the Federal Communications Commission's Rules Governing the Licensing of, and Spectrum Usage by, Commercial Earth Stations and Space Stations.

Form Number: FCC Form 312; Schedule A; Schedule B: Schedule S; FCC Form 312–R, FCC Form 312–EZ.

Respondents: Business or other for profit entities; Not for profit institutions.

Number of Respondents and Responses: 7,170 respondents; 7,219 responses.

Estimated Time per Response: 0.5–80 hours.

Frequency of Response: On occasion, one time, and annual reporting requirements; third party disclosure requirement; recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority that covers this information collection is contained in 47 U.S.C. 154, 301, 302, 303, 307, 309, 310, 319, 332, 605 and 721.

Total Annual Burden: 42,014 Hours.

Total Annual Cost: $12,411,120.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: In general, there is no need for confidentiality with this collection of information. Certain information collected regarding international coordination of satellite systems is not routinely available for public inspection pursuant to 5 U.S.C. 552(b) and 47 CFR 0.457(d)(vii).

Needs and Uses: The Office of Management and Budget (OMB) approved a revision of the information collection titled ''Part 25 of the Federal Communications Commission's Rules Governing the Licensing of, and Spectrum Usage By, Commercial Earth Stations and Space Stations'' under OMB Control No. 3060–0678, as a result of a recent rulemaking discussed below.

On July 13, 2018, the Federal Communications Commission (''Commission'') released an Order titled, ''In the Matter of Expanding Flexible Use of the 3.7 to 4.2 GHz Band; Expanding Flexible Use in Mid-Band Spectrum Between 3.7 and 24 GHz; Petition for Rulemaking to Amend and Modernize Parts 25 and 101 of the Commission's Rules to Authorize and Facilitate the Deployment of Licensed Point-to-Multipoint Fixed Wireless Broadband Service in the 3.7–4.2 GHz Band; Fixed Wireless Communications Coalition, Inc., Request for Modified Coordination Procedures in Band Shared Between the Fixed Service and the Fixed Satellite Service,'' GN Docket No. 18–122, GN Docket No. 17–183, RM–11791, RM–11778 (FCC 18–91). The Order has been published in the **Federal Register**. 83 FR 42043 (Aug. 20, 2018).

In this proceeding, the Commission seeks to identify potential opportunities for additional terrestrial use for wireless broadband services of 500 megahertz of mid-band spectrum between 3.7–4.2 GHz. In response to concerns that the Commission's information regarding current use of the band is inaccurate and/or incomplete, the Commission adopted an Order requesting additional information from operators in the fixed-satellite service (FSS). Specifically, for FSS operators in the 3.7–4.2 GHz band, the Order (1) requests additional information on the operations of temporary-fixed earth station licensees, and (2) requests additional information on the operations of space stations. This information collection will provide the Commission and the public with additional information about existing FSS operators that will be used to consider potential new terrestrial services in the 3.7–4.2 GHz band while protecting the interests of those FSS operators. The Order also requires certain earth station operators to file certifications that information on file with the Commission remains accurate.

Federal Communications Commission.

Cecilia Sigmund,

Federal Register Liaison.

[FR Doc. 2019–06472 Filed 4–3–19; 8:45 am]
BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 180713633–9174–02]

RIN 0648–XG936

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Using Trawl Gear in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the B season apportionment of the 2019 Pacific cod total allowable catch allocated to catcher vessels using trawl gear in the BSAI.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), April 2, 2019, through 1200 hours, A.l.t., June 10, 2019.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

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

The B season apportionment of the 2019 Pacific cod total allowable catch (TAC) allocated to catcher vessels using trawl gear in the BSAI is 3,923 metric tons (mt) as established by the final 2019 and 2020 harvest specifications for groundfish in the BSAI (84 FR 9000, March 13, 2019).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the B season apportionment of the 2019 Pacific cod TAC allocated to trawl catcher vessels in the BSAI will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 2,923 mt and is setting aside the remaining 1,000 mt as incidental catch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher vessels using trawl gear in the BSAI.

While this closure is effective the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of directed fishing for Pacific cod by catcher vessels using trawl gear in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 28, 2019.

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

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

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

Dated: March 29, 2019.

Jennifer M. Wallace,

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

[FR Doc. 2019–06502 Filed 4–1–19; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 84, No. 65
Thursday, April 4, 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 DEPOSIT INSURANCE CORPORATION

12 CFR Part 330

RIN 3064–AF04

Joint Ownership Deposit Accounts

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is seeking comment on a proposed rule that would amend the regulation governing one of the requirements for an account to be separately insured as a joint account. Specifically, the proposed rule would provide an alternative method to satisfy the ''signature card'' requirement. Under the proposal, the ''signature card'' requirement could be satisfied by information contained in the deposit account records of the insured depository institution establishing co-ownership of the deposit account, such as evidence that the institution has issued a mechanism for accessing the account to each co-owner or evidence of usage of the deposit account by each co-owner.

DATES: Comments will be accepted until May 6, 2019.

ADDRESSES: You may submit comments on the notice of proposed rulemaking using any of the following methods:

- *Agency Website: https://www.fdic.gov/regulations/laws/federal.* Follow the instructions for submitting comments on the agency website.
- *Email: comments@fdic.gov.* Include RIN 3064–AF04 on the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429. Include RIN 3064–AF04 on the subject line of the letter.
- *Hand Delivery/Courier:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m. Include RIN 3064–AF04 on the subject line of the letter.
- *Public Inspection:* All comments received, including any personal information provided, will be posted generally without change to *https://www.fdic.gov/regulations/laws/federal.*

FOR FURTHER INFORMATION CONTACT: James Watts, Counsel, Legal Division, (202) 898–6678, *jwatts@fdic.gov;* Teresa Franks, Associate Director, Division of Resolutions and Receiverships, (571) 858–8226, *tfranks@fdic.gov;* Martin Becker, Chief, Deposit Insurance, Division of Depositor and Consumer Protection, (202) 898–7207, *mbecker@fdic.gov.*

SUPPLEMENTARY INFORMATION:

Policy Objectives

The FDIC is proposing to amend its regulation governing the requirements for a deposit account to be insured as a joint account, 12 CFR 330.9, and specifically, the requirement that each co-owner of a joint account has personally signed a deposit account signature card. The FDIC periodically receives inquiries regarding this requirement. Those inquiries have increased following the issuance of a rule (Recordkeeping Rule) [1] that requires certain large insured depository institutions (covered institutions) to configure their information technology systems to be capable of calculating insurance coverage for deposit accounts in the event of the institution's failure. The Recordkeeping Rule has introduced an element of pre-judgment involving identification of account categories and satisfaction of recordkeeping requirements for the institutions subject to that Rule.[2] In particular, for purposes of that Rule, covered institutions are required to review their records and update missing and erroneous deposit account information (Legacy Data Cleanup).[3] As part of the Legacy Data Cleanup, covered institutions must obtain signature cards for owners of accounts with multiple co-owners that are missing one or more required signature cards (affected joint accounts). Staff at the FDIC has engaged in discussions with these covered institutions as part of the implementation process, and these discussions have brought to light certain issues concerning the application of the signature card requirement, leading the FDIC to reconsider the methods by which joint ownership may be established for purposes of deposit insurance.

The proposed rule is intended to reduce the regulatory burden associated with obtaining deposit account signature cards for all insured depository institutions (IDIs). For covered institutions (*i.e.,* IDIs subject to the Recordkeeping Rule) discussed above, the proposed rule also would reduce the burden of obtaining signature cards for owners of affected joint accounts. The proposed rule is intended to facilitate the prompt payment of deposit insurance in the event of an IDI's failure by providing alternative methods that the FDIC could use to determine the owners of joint accounts, consistent with its statutory authority. These changes would promote confidence in FDIC-insured deposits. Finally, the proposal embodies a forward-looking approach that would permit the use of new and innovative technologies and processes to meet the FDIC's policy objectives.

Background: Current Regulatory Approach

The FDIC is authorized to prescribe rules and regulations as it may deem necessary to carry out the provisions of the Federal Deposit Insurance Act (FDI Act).[4] Under the FDI Act, the FDIC is responsible for paying deposit insurance in the event of an IDI's failure up to the standard maximum deposit insurance amount, which is currently set at $250,000.[5] The statute provides that deposits maintained by each depositor in the same capacity and the same right at the same IDI generally must be aggregated and insured up to the standard maximum deposit insurance amount.[6] Because the statute does not define ''capacity'' or ''right,'' the FDIC has implemented these terms by issuing

[1] *See* Recordkeeping for Timely Deposit Insurance Determination, 81 FR 87734 (Dec. 5, 2016); 12 CFR part 370.

[2] The Recordkeeping Rule generally applies to IDIs that have 2 million or more deposit accounts. 12 CFR 370.2(c).

[3] Insured depository institutions that are not subject to the Recordkeeping Rule are not required to perform Legacy Data Cleanup, but may choose to do so to provide added certainty regarding deposit insurance coverage to their depositors.

[4] 12 U.S.C. 1819(Tenth); 1820(g).

[5] 12 U.S.C. 1821(a)(1).

[6] 12 U.S.C. 1821(a)(1)(B), (C).

regulations recognizing particular categories of accounts, such as single ownership accounts and joint ownership accounts.[7] If a deposit meets the requirements for a particular category, the deposit is insured up to the $250,000 limit separately from deposits held by the depositor in a different category at the same IDI. For example, deposits in the single ownership category will be separately insured from deposits in the joint ownership category held by the same depositor at the same IDI.

Section 330.9 of the FDIC's regulations governs insurance coverage for joint ownership accounts. Joint ownership accounts include deposit accounts held pursuant to various forms of co-ownership under state law. For example, joint tenants could each hold an equal, undivided interest in a deposit account. Section 330.9 provides that only ''qualifying joint accounts'' (whether owned as joint tenants with the right of survivorship, as tenants in common, or as tenants by the entirety) are insured separately from individually-owned deposit accounts maintained by the co-owners.[8] ''Qualifying joint accounts'' generally must satisfy three requirements: (1) All co-owners of the funds in the account are ''natural persons,'' as defined in section 330.1(*l*) of the regulations; (2) each co-owner has personally signed a deposit account signature card; and (3) each co-owner possesses withdrawal rights on the same basis.[9] If a joint deposit account is not a qualifying joint account, each co-owner's actual ownership interest in the account is aggregated with other single ownership accounts of such individual or other accounts of such entity.[10] This may result in some uninsured deposits if a depositor's single ownership accounts at the same IDI, including deposits in any non-qualifying joint accounts, exceed $250,000.

The requirement that each co-owner of a joint account has personally signed a deposit account signature card (signature card requirement) in order for the account to be insured as a joint account has been included in the regulation governing insurance coverage since 1967.[11] This requirement was intended to address practices such as the addition of nominal co-owners to an account solely to increase deposit insurance coverage.[12] The FDIC has periodically considered whether the signature card requirement should be eliminated, but retained the requirement, concluding that signature cards are reliable indicators of deposit ownership.[13] The FDIC continues to view the signature card requirement as important to ensuring consistency with the FDI Act, which expressly limits the amount of deposit insurance coverage available to each depositor at a particular IDI based on the right and capacity in which funds are held.

Neither the FDI Act nor the FDIC's regulations define the term ''signature card.'' FDIC staff has taken the position that section 330.9 does not require any particular format for a deposit account signature card. Therefore, staff has previously concluded that IDIs may satisfy the requirement through various forms of documentation used in their account opening processes. For example, staff has concluded that a deposit account agreement signed by each of an account's co-owners would satisfy the signature card requirement. Published guidance also states that electronic signatures satisfy the requirement.[14]

Description of the Proposed Rule

The FDIC is proposing to amend section 330.9 to provide an alternative method to satisfy the signature card requirement. The proposed rule would allow the signature card requirement to be satisfied by information contained in the deposit account records of the IDI establishing co-ownership of the deposit account, such as evidence that the institution has issued a mechanism for accessing the account to each co-owner or evidence of usage of the deposit account by each co-owner. For example, under this proposal, the requirement could be satisfied by evidence that an IDI has issued a debit card to each co-owner of the account or evidence that each co-owner of the account has transacted using the deposit account. These examples, however, are not intended to define the only forms of evidence of co-ownership that could satisfy the signature card requirement.

The proposed rule only would affect a requirement in the FDIC's regulations that must be satisfied for a deposit account to be separately insured as a joint account; it would not affect any other legal requirements applicable to IDIs. IDIs may, for legal or other reasons, find it appropriate or necessary to continue collecting customers' signatures.

The proposed rule also would not affect the general provisions contained in the FDIC's deposit insurance regulations regarding recognition of deposit ownership.[15] These general rules concerning recognition of deposit ownership would continue to apply to all deposit accounts, including joint accounts.

The proposed rule would not introduce new requirements with respect to the requirements for an account to be insured as a joint account, and would not reduce or affect insurance coverage for any account for which the existing joint account requirements are satisfied. The proposed rule simply would provide an alternative method to satisfy the existing signature card requirement. If each co-owner of a joint account signs, or has previously signed, a deposit account signature card in accordance with the existing requirement, the alternative method provided by the proposed rule would be unnecessary. Assuming that the remaining joint account requirements are satisfied—that is, all co-owners of the account are natural persons and possess equal withdrawal rights—the account would be insured as a joint account.

The FDIC is also proposing a conforming amendment to section 330.9 consistent with the Electronic Signatures in Global and National Commerce Act (E-Sign Act).[16] Specifically, the FDIC proposes to amend the regulation to state expressly that the signature card requirement may be satisfied electronically. The current requirement that each depositor has personally signed a deposit account signature card would be amended to require that each depositor has personally signed, which may include signing electronically, a deposit account signature card. This amendment would clarify for IDIs and depositors the manner in which the signature card requirement may be satisfied, and is consistent with published guidance and

[7] *See* 12 CFR part 330.

[8] 12 CFR 330.9(a).

[9] 12 CFR 330.9(c)(1). The signature card requirement does not apply to certificates of deposit, deposits evidenced by negotiable instruments, or accounts maintained by an agent, nominee, guardian, or conservator on behalf of two or more persons. 12 CFR 330.9(c)(2).

[10] 12 CFR 330.9(d).

[11] *See* 32 FR 10408, 10409 (July 14, 1967) (''A joint deposit account shall be deemed to exist, for purposes of insurance of accounts, only if each co-owner has personally executed a deposit account signature card and possesses withdrawal rights.'')

[12] The FDIC stated that its purpose was to ''carry out the concept of limited insurance coverage intended by Federal deposit insurance,'' and it interpreted the FDI Act to ''limit the various devices commonly used to increase such coverage beyond that meant to be provided by law.'' 32 FR 10408 (July 14, 1967).

[13] *See, e.g.,* 55 FR 20111, 20113 (May 15, 1990).

[14] *See* FDIC *Financial Institution Employee's Guide to Deposit Insurance,* 2016 ed., at 34.

[15] *See* 12 CFR 330.5.

[16] Public Law 106–229; 15 U.S.C. 7001(a).

staff interpretations of section 330.9.[17] It would not substantively alter the regulatory requirements for joint accounts.

Expected Effects

The proposed rule would apply to all IDIs and is expected to broaden the types of documentation that would be acceptable to satisfy the signature card requirement at the time of an IDI's failure. In this way, for all IDIs, the proposed rule is intended to reduce the regulatory burden associated with obtaining deposit account signature cards. It would not impose any new recordkeeping requirements for joint accounts.

The proposed rule would, however, have a more immediate regulatory burden relief impact on the covered institutions subject to the Recordkeeping Rule. For purposes of that Rule, as discussed above, covered institutions are currently engaged in Legacy Data Cleanup. As part of the Legacy Data Cleanup, covered institutions must obtain signature cards for owners of affected joint accounts. By providing an alternative method to satisfy the signature card requirement that relies on other information in the institution's deposit account records, the proposed rule should reduce the Legacy Data Cleanup burden associated with obtaining missing signature cards for covered institutions subject to the Recordkeeping Rule.

To estimate the burden reduction of the proposed rule relating to Legacy Data Cleanup, the FDIC estimates: (1) The cost of obtaining signature cards for an affected joint account; and (2) the total number of affected joint accounts held at covered institutions subject to the Recordkeeping Rule. The product of these two figures is the estimated cost burden of collecting missing signatures. The proposed rule would reduce that burden by allowing covered institutions subject to the Recordkeeping Rule to satisfy the signature card requirement using other information in their deposit account records establishing co-ownership of the deposit account.

The FDIC's estimate of the cost of obtaining missing signature cards for an affected joint account is based on cost estimates used in connection with the Recordkeeping Rule. Legacy Data Cleanup costs for the Recordkeeping Rule were estimated at $226 million to address approximately 21 million deposit accounts held in covered institutions.[18] [19] This represents an average of approximately $11 per account. Although accounts may require Legacy Data Cleanup for a variety of reasons, the Recordkeeping Rule estimates that ''more than 90 percent of the legacy data cleanup costs are associated with manually collecting account information from customers and entering it into the covered institution's systems.'' [20] The process of obtaining a missing signature fits this description, and the FDIC believes that $11 per account is a reasonable estimate of the average cost of obtaining signatures for an affected joint account.

The cost estimates used in the Recordkeeping Rule are based on data from the institutions covered by the Recordkeeping Rule at the time that Rule was issued. As of December 31, 2018, 36 covered institutions subject to the Recordkeeping Rule held approximately 418 million deposit accounts.[21] Assuming that 25 percent of those accounts are joint,[22] and assuming that 5 percent of joint accounts are missing at least one required signature,[23] there are a total of approximately 5.2 (= 418 * 25% * 5%) million affected joint accounts. At an estimated cost of $11 per affected joint account, the FDIC estimates a total cost burden of $57 million for covered institutions subject to the Recordkeeping Rule to update deposit account records related to affected joint accounts. The proposed rule would reduce this burden, resulting in an estimated cost savings for these institutions of $57 million.

IDIs that are not subject to the Recordkeeping Rule are not required to perform Legacy Data Cleanup, but some may, nonetheless, choose to do so to provide added certainty regarding deposit insurance coverage to their depositors. As of December 31, 2018, there were approximately 162 million deposit accounts held at 5,379 IDIs not covered by the Recordkeeping Rule. Given the same assumptions outlined in the previous paragraph, the FDIC estimates there are a total of 2.0 (= 162 * 25% * 5%) million affected joint accounts held at these IDIs. The proposed rule would alleviate some of the burden of addressing these affected joint accounts, resulting in estimated cost savings of up to $22 ($11 * 2.0) million.

The total estimated burden reduction for the industry associated with updating deposit account records for joint accounts is estimated to be between $57 and $79 million, depending on the number of IDIs not subject to the Recordkeeping Rule that choose to update their deposit account records. In addition, the proposed rule could alleviate some of the burden of obtaining signature cards for new joint accounts at all IDIs. The FDIC expects this benefit to be *de minimis* because electronic signatures may be used to satisfy the signature card requirement pursuant to the E-Sign Act.

The rule also provides non-quantifiable benefits to owners of joint accounts. By providing alternative methods that the FDIC could use to determine the owners of joint accounts, the proposed rule would further support a prompt deposit insurance determination in the event of an IDI's failure, alleviating delays in the recognition of account ownership and uncertainty regarding the extent of deposit insurance coverage. These benefits would promote depositor confidence in the nation's banking system and particularly in FDIC-insured deposits.

The FDIC is also proposing a conforming amendment to section 330.9 consistent with the E-Sign Act. This conforming amendment is not expected to result in any discernable economic effect, as current FDIC practice already permits IDIs to use electronic signatures. The effects of the conforming amendment would be limited to eliminating uncertainty regarding the regulation.

The FDIC invites comments on all aspects of the information provided in this section.

[17] *See* FDIC *Financial Institution Employee's Guide to Deposit Insurance,* 2016 ed., at 34.

[18] *See* 81 FR 87742–43. The analysis for the Recordkeeping Rule estimated that approximately 5 percent of the approximately 416 million deposit accounts held by covered institutions would require manual data cleanup.

[19] The $226 million estimate includes both costs incurred by the institutions and costs incurred by depositors to update missing account information. *See* 81 FR 87747.

[20] 81 FR 87742.

[21] FDIC Consolidated Reports of Condition and Income, as of December 31, 2018.

[22] According to recent Census estimates, approximately 60 percent of Americans live with a spouse or partner (U.S. Census Bureau, Current Population Survey, Annual Social and Economic Supplement, 1967 to 2018). In addition, according to a recent banking survey, 58 to 76 percent of Americans in relationships have at least one joint account (TD Love & Money, Report of Findings, Customer Insights, July 2017). Based on these figures, the FDIC estimates that between 35 and 46 percent of Americans hold a joint account. Assuming that joint accounts have two owners on average, the FDIC estimates that between 21 and 30 percent of deposit accounts are joint. (For example, if 35 percent of Americans share a joint account with another American and the remaining 65 percent each has a personal account, then (35/2)/(35/2 + 65) = 21 percent of accounts are joint). For this analysis, the FDIC assumes the middle value of 25% as an estimate of the percent of accounts that are joint.

[23] Following the analysis in the Recordkeeping Rule, the FDIC assumes that 5% of accounts will require data cleanup.

Alternatives Considered

The FDIC has considered alternatives to the proposed rule that could achieve its policy objectives. A few of these alternatives are described below.

Alternative 1: Status Quo. The FDIC considered maintaining the current requirements for accounts to be insured as joint accounts. To address burden issues raised by covered institutions currently conducting Legacy Data Cleanup pursuant to the Recordkeeping Rule, the FDIC notes that such institutions may request relief pursuant to that Rule for existing accounts for which the owners seek deposit insurance coverage as a joint account.[24] However, as discussed above, the proposed rule would reduce the burden associated with Legacy Data Cleanup, so the potential cost savings to covered institutions subject to the Recordkeeping Rule would result in a greater benefit. The proposed rule also may result in cost savings for IDIs that are not subject to the Recordkeeping Rule, but nonetheless choose to perform Legacy Data Cleanup.

As a subset of Alternative 1, the FDIC considered whether covered institutions could simply focus on or prioritize accounts with balances of more than $250,000 for purposes of their Legacy Data Cleanup. This approach may address regulatory burden to some degree, but could also be interpreted as introducing a distinction between large IDIs and small IDIs with respect to deposit insurance coverage. Due to this concern, the expected benefits of this alternative are smaller than those of the proposed rule.

Alternative 2: Amend Certification Requirement for Institutions Subject to Part 370. As discussed above, the covered institutions subject to the Recordkeeping Rule are required to collect missing signatures for joint accounts. The FDIC considered amending the Recordkeeping Rule's certification requirements to allow covered institutions to certify their compliance based on substantial or good faith compliance with the deposit insurance rules with respect to their joint deposit accounts. This would allow institutions subject to the Recordkeeping Rule to certify compliance with that Rule while continuing to address data cleanup for affected deposit accounts. Because institutions would still incur costs associated with obtaining missing signatures, however, the expected benefits of this alternative are smaller than the expected benefits of the proposed rule.

Alternative 3: Eliminate Signature Card Requirement for Qualifying Joint Accounts. The FDIC considered amending section 330.9 to eliminate the signature card requirement for joint accounts. As discussed above, however, the FDIC continues to view the signature card requirement as important to ensuring consistency with the FDI Act, particularly, the requirement to insure depositors based on the right and capacity in which funds are held. The signature card requirement is intended to address practices such as the addition of nominal co-owners to a deposit account without their knowledge solely for the purpose of increasing deposit insurance coverage. The proposed rule is intended to retain consistency with the FDI Act while providing a method of satisfying the signature card requirement that reduces regulatory burden. Given the benefits of keeping the signature card requirement, the expected benefits of this alternative are smaller than those of the proposed rule.

Alternative 4: Leverage Bank Secrecy Act/Anti-Money Laundering Processes. The FDIC considered amending section 330.9 to allow IDIs to satisfy the signature card requirement based on existing Bank Secrecy Act/Anti-Money Laundering (BSA/AML) processes. This could reduce regulatory burden by leveraging existing compliance processes. However, while BSA/AML processes serve a valuable purpose in identifying the individuals opening accounts, these processes do not address the purpose of the signature card requirement, which is to indicate actual ownership of the funds in the deposit account. This approach would intertwine deposit insurance coverage with a compliance regime that serves a different purpose. Moreover, exceptions to BSA/AML requirements may apply to many of the older deposit accounts for which signature cards are less likely to be available. Thus, it is unclear that compliance with BSA/AML requirements would provide additional assurance that a deposit account's titled co-owners actually own the funds in the account. In addition, this approach could allow weaknesses in BSA/AML compliance to affect deposit insurance coverage for the IDI's customers. Due to the concerns discussed above, the expected benefits of this alternative are smaller than those of the proposed rule.

Request for Comment

The FDIC is requesting comment on all aspects of the proposed rule, including the alternatives presented. Comment is specifically invited with respect to the following questions:

- Can IDIs, including IDIs that rely on deposit account systems designed or maintained by third-party vendors, obtain information on account usage or access by the co-owners of an account?
- Would the proposed rule sufficiently address satisfaction of the signature card requirement through electronic methods, given the variety of account opening procedures used by IDIs? If not, what clarifications or changes are necessary?
- Is any data available concerning the cost or effort that might be required for IDIs to obtain deposit account signature cards for co-owners where a signature card is currently not available in the deposit account records of the IDI?
- How should the FDIC approach ensuring that a depositor does not use another person's personally identifiable information to establish a deposit account without the other person's knowledge simply to increase deposit insurance coverage?
- Are there any additional factors that the FDIC should consider in determining whether the alternatives to the proposed rule described above would better satisfy the agency's policy objectives of reducing regulatory burden and promoting the prompt payment of deposit insurance consistent with the FDI Act in the event of an IDI's failure?
- Are there other alternatives that the FDIC should consider that would better satisfy those objectives?
- Does the proposed rule minimize the potential for depositor confusion over the requirements for joint accounts?

Regulatory Analysis

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency, in connection with a proposed rule, to prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of a proposed rule on small entities.[25] However, an initial 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.[26] The Small Business Administration (SBA) has defined ''small entities'' to include banking organizations with total assets of less than or equal to $550 million.[27] For the reasons described

[24] *See* 12 CFR 370.8.

[25] 5 U.S.C. 601 *et seq.*

[26] 5 U.S.C. 605(b).

[27] The SBA defines a small banking organization as having $550 million or less in assets, where an organization's ''assets are determined by averaging

below, the FDIC certifies pursuant to section 605(b) of the RFA that the proposed rule will not have a significant economic impact on a substantial number of small entities.

As of September 30, 2018, the FDIC insured 5,486 institutions, of which 4,047 are considered small entities for the purposes of RFA.[28] These small IDIs hold approximately 31 million deposit accounts, with an average of 7,700 deposit accounts and a maximum of approximately 143,000 deposit accounts held at a single small IDI.

The proposed rule would amend section 330.9 to provide an alternative method to satisfy the signature card requirement for joint accounts based on information contained in the deposit account records of the insured depository institution establishing co-ownership of the deposit account. As discussed in Expected Effects section, because no small IDIs are covered by the Recordkeeping Rule, a small IDI would only experience burden relief from the proposed rule if it first chose to update its account records. In this case, the proposed rule is estimated to reduce burden in the amount of $11 per affected joint account. This potential burden reduction is conditional on the IDI's choice to update its records.

Following the burden reduction estimation outlined in the Expected Effects section, the FDIC estimates the burden reduction for each of the 4,047 small IDIs covered by this proposed rule by multiplying the number of deposit accounts held at each small IDI by 25 percent to estimate the number of joint accounts, then by 5 percent to estimate the number of affected joint accounts, and finally by $11 to estimate the cost of addressing those affected joint accounts. The potential burden reduction for each institution ranges from less than a dollar to approximately twenty thousand dollars, with an average of approximately one thousand dollars per small IDI. Expressed as a proportion of assets, the potential burden reduction ranges from less than a millionth of one percent to less than two hundredths of one percent of total assets.

The proposed rule would apply to all IDIs, affecting a substantial number of small entities. However, the economic impact on each small entity is insignificant, with no entity affected by more than two hundredths of one percent of total assets held. Accordingly, the FDIC certifies that the proposal will not have a significant economic impact on a substantial number of small entities.

The FDIC invites comments on all aspects of the supporting information provided in this section, and in particular, whether the proposed rule would have any significant effects on small entities that the FDIC has not identified.

Riegle Community Development and Regulatory Improvement Act

Section 302 of the Riegle Community Development and Regulatory Improvement Act (RCDRIA) requires that the Federal banking agencies, including the FDIC, in determining the effective date and administrative compliance requirements of new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, 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.[29] Subject to certain exceptions, new regulations and amendments to regulations prescribed by a Federal banking agency which impose additional reporting, disclosures, or other new requirements on insured depository institutions shall take effect on the first day of a calendar quarter which begins on or after the date on which the regulations are published in final form.[30]

The proposed rule would not impose additional reporting or disclosure requirements on insured depository institutions, including small depository institutions, or on the customers of depository institutions. It would provide an alternative method to satisfy the existing signature card requirement for joint deposit accounts based on information contained in the deposit account records of the insured depository institution. Accordingly, section 302 of RCDRIA does not apply. Nevertheless, the requirements of RCDRIA will be considered as part of the overall rulemaking process, and the FDIC invites comments that will further inform its consideration of RCDRIA.

Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501–3521, the FDIC 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 proposed rule would not require any information collections for purposes of the PRA, and therefore, no submission to OMB is required.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The FDIC has determined that the proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681).

Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Public Law 106–102, 113 Stat. 1338, 1471 (Nov. 12, 1999), requires the Federal banking agencies to use plain language in all proposed and final rulemakings published in the **Federal Register** after January 1, 2000. The FDIC invites your comments on how to make this proposal easier to understand. For example:

- Has the FDIC organized the material to suit your needs? If not, how could the material be better organized?
- Are the requirements in the proposed regulation clearly stated? If not, how could the regulation be stated more clearly?
- Does the proposed regulation contain language or jargon that is unclear? 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?

List of Subjects in 12 CFR Part 330

Bank deposit insurance, Reporting and recordkeeping requirements, Savings associations.

Authority and Issuance

For the reasons stated in the preamble, the Federal Deposit Insurance Corporation proposes to amend 12 CFR part 330 as follows:

the assets reported on its four quarterly financial statements for the preceding year.'' *See* 13 CFR 121.201 (as amended, effective December 2, 2014). In its determination, the SBA ''counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates.'' 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.

[28] Consolidated Reports of Condition and Income for the quarter ending September 30, 2018.

[29] 12 U.S.C. 4802(a).

[30] 12 U.S.C. 4802(b).

PART 330—DEPOSIT INSURANCE COVERAGE

■ 1. The authority citation for Part 330 continues to read as follows:

Authority: 12 U.S.C. 1813(l), 1813(m), 1817(i), 1818(q), 1819(a)(Tenth), 1820(f), 1820(g), 1821(a), 1821(d), 1822(c).

■ 2. Revise § 330.9(c) to read as follows:

§ 330.9 Joint ownership accounts.

* * * * *

(c) *Qualifying joint accounts.* (1) *Qualification requirements.* A joint deposit account shall be deemed to be a qualifying joint account, for purposes of this section, only if:

(i) All co-owners of the funds in the account are ''natural persons'' (as defined in § 330.1(*l*));

(ii) Each co-owner has personally signed, which may include signing electronically, a deposit account signature card; and

(iii) Each co-owner possesses withdrawal rights on the same basis.

(2) *Limited exceptions.* The signature-card requirement of paragraph (c)(1)(ii) of this section shall not apply to certificates of deposit, to any deposit obligation evidenced by a negotiable instrument, or to any account maintained by an agent, nominee, guardian, custodian, or conservator on behalf of two or more persons.

(3) *Evidence of deposit ownership.* All deposit accounts that satisfy the criteria in paragraph (c)(1) of this section, and those accounts that come within the exception provided for in paragraph (c)(2) of this section, shall be deemed to be jointly owned provided that, in accordance with the provisions of § 330.5(a), the FDIC determines that the deposit account records of the insured depository institution are clear and unambiguous as to the ownership of the accounts. If the deposit account records are ambiguous or unclear as to the manner in which the deposit accounts are owned, then the FDIC may, in its sole discretion, consider evidence other than the deposit account records of the insured depository institution for the purpose of establishing the manner in which the funds are owned. The signatures of two or more persons on the deposit account signature card or the names of two or more persons on a certificate of deposit or other deposit instrument shall be conclusive evidence that the account is a joint account (although not necessarily a qualifying joint account) unless the deposit records as a whole are ambiguous and some other evidence indicates, to the satisfaction of the FDIC, that there is a contrary ownership capacity.

(4) *Alternative method to satisfy signature-card requirement.* The signature-card requirement of paragraph (c)(1)(ii) of this section also may be satisfied by information contained in the deposit account records of the insured depository institution establishing co-ownership of the deposit account, such as evidence that the institution has issued a mechanism for accessing the account to each co-owner or evidence of usage of the deposit account by each co-owner.

* * * * *

By order of the Board of Directors of the Federal Deposit Insurance Corporation.

Dated at Washington, DC, on March 29, 2019.

Valerie Best,

Assistant Executive Secretary.

[FR Doc. 2019–06534 Filed 4–3–19; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0189; Product Identifier 2019–NM–001–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Bombardier, Inc., Model DHC–8–102, –103, and –106 airplanes; DHC–8–200 series airplanes; and DHC–8–300 series airplanes. This proposed AD was prompted by the reported loss of an elevator spring tab balance weight prior to takeoff. This proposed AD would require inspecting the two balance weights and the two hinge arms on each elevator spring tab, and corrective actions if necessary. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by May 20, 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 Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd.qseries@aero.bombardier.com;* internet *http://www.bombardier.com.* You may view this 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–2019–0189; 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: Andrea Jimenez, Aerospace Engineer, Airframe and Mechanical Systems Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7330; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2019–0189; Product Identifier 2019–NM–001–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

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian AD CF–2018–30, dated November 7, 2018 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Bombardier, Inc., Model DHC–8–102, –103, and –106 airplanes; DHC–8–200 series airplanes; and DHC–8–300 series airplanes. The MCAI states:

One operator has reported the loss of an elevator spring tab balance weight prior to takeoff. An investigation found that clearances, due to tolerance stack-up between balance weight and hinge arm, allow the attachment bolts to fret with the hinge arm causing wear and potentially progressing to fracture and loss of the spring tab balance weight. The loss of a spring tab balance weight could result in unacceptable flutter margins and loss of the aeroplane.

This [Canadian] AD mandates a one-time [detailed] inspection to verify the spring tab balance weights are securely attached on both the left hand and right hand spring tab assemblies. If any of the balance weights are found loose, instructions are given to repair any damage to the hinge arm, and to add a solid shim between balance weight and hinge arm to eliminate any potential gap, and to specify balance weight attachment hardware that has low susceptibility to hydrogen embrittlement.

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–2019–0189.

Related Service Information Under 1 CFR Part 51

Bombardier has issued Service Bulletin 8–55–27, Revision A, dated August 15, 2018. This service information describes procedures for inspecting the two balance weights and the two hinge arms on each elevator spring tab, and corrective actions including inspecting the holes in the hinge arm, inspecting the hinge arm for corrosion and chafing, installing bushings and a solid shim, replacing the hinge arm, repairing damage to the hinge arm, and permanently securing the mass balance.

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 accomplishing the actions specified in the service information described previously.

Costs of Compliance

We estimate that this proposed AD affects 47 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
2 work-hours × $85 per hour = $170	$0	$170	$7,990

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

ESTIMATED COSTS FOR ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
Up to 18 work-hours × $85 per hour = $1,530	$0	Up to $1,530.

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):

Bombardier, Inc.: Docket No. FAA–2019–0189; Product Identifier 2019–NM–001–AD.

(a) Comments Due Date

We must receive comments by May 20, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc., Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 airplanes, certificated in any category, serial numbers 003 through 672 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 55, Stabilizers.

(e) Reason

This AD was prompted by the reported loss of an elevator spring tab balance weight prior to takeoff. We are issuing this AD to address tolerance stack-up between the balance weight and the hinge arm that can allow the attachment bolts to fret with the hinge arm and result in wear, fracture, and loss of the spring tab balance weight. Loss of the spring tab balance weight can lead to unacceptable flutter margins and loss of the airplane.

(f) Compliance

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

(g) Inspection and Corrective Actions

Within 600 flight hours after the effective date of this AD, perform a detailed inspection of the two balance weights and a detailed inspection of the two hinge arms on each elevator spring tab (left hand and right hand), in accordance with Section 3.B, Part A, of the Accomplishment Instructions of Bombardier Service Bulletin 8–55–27, Revision A, dated August 15, 2018.

(1) If any of the balance weight attachment locknuts, part number (P/N) MS21042–4, is found fractured, loose, or missing: Before further flight conduct the rectification in accordance with Section 3.B, Part B, of the Accomplishment Instructions of Bombardier Service Bulletin 8–55–27, Revision A, dated August 15, 2018.

(2) If the balance weight is found not secure: Within 60 flight hours after the inspection required by paragraph (g) of this AD, repair any damage to the hinge arm and permanently secure the mass balance, in accordance with Section 3.B, Part B, of the Accomplishment Instructions of Bombardier Service Bulletin 8–55–27, Revision A, dated August 15, 2018.

(3) If the balance weight is found secure: Within 5,000 flight hours after the inspection required by paragraph (g) of this AD, repair any damage to the hinge arm and permanently secure the mass balance, in accordance with Section 3.B, Part B, of the Accomplishment Instructions of Bombardier Service Bulletin 8–55–27, Revision A, dated August 15, 2018.

(4) Where Bombardier Service Bulletin 8–55–27, Revision A, dated August 15, 2018, specifies to contact Bombardier for appropriate action: Before further flight, accomplish corrective actions in accordance with the procedures specified in paragraph (i)(2) of this AD.

(h) Credit for Previous Actions

This paragraph provides credit for actions required by paragraphs (g), (g)(2), (g)(3), and (g)(4) of this AD, if those actions were performed before the effective date of this AD using Section 3.B of the Accomplishment Instructions of Bombardier Service Bulletin 8–55–27, dated April 17, 2018, provided that within 600 flight hours after the effective date of this AD, a detailed visual inspection of the balance weight locknuts, P/N MS21042–4, is performed in accordance with Section 3.B, Part C, of the Accomplishment Instructions of Bombardier Service Bulletin 8–55–27, Revision A, dated August 15, 2018, and the rectification is performed before further flight for any fractured, loose, or missing balance weight attachment locknuts, P/N MS21042–4, in accordance with Section 3.B, Part B, of Bombardier Service Bulletin 8–55–27, Revision A dated August 15, 2018.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian AD CF–2018–30, dated November 7, 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–2019–0189.

(2) For more information about this AD, contact Andrea Jimenez, Aerospace Engineer, Airframe and Mechanical Systems Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7330; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov*.

(3) For service information identified in this AD, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd.qseries@aero.bombardier.com*; internet *http://www.bombardier.com*. 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 March 28, 2019.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–06458 Filed 4–3–19; 8:45 am]

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FEDERAL TRADE COMMISSION

16 CFR Part 313

RIN 3084–AB42

Privacy of Consumer Financial Information Rule Under the Gramm-Leach-Bliley Act

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking; request for public comment.

SUMMARY: The Federal Trade Commission is proposing to amend its Privacy Rule for certain financial institutions subject to the Rule to revise the Rule's scope, to modify the Rule's definitions of ''financial institution'' and ''federal functional regulator,'' and to update the Rule's annual customer privacy notice requirement. The proposed amendments will also remove certain examples in the Rule that apply to financial institutions that now fall outside the scope of the Commission's Rule. This action is necessary to conform the Rule to the current requirements of the Gramm-Leach-Bliley Act (GLBA), as amended by the Dodd-Frank and FAST Acts, and will clarify which financial institutions are covered by the Commission's Rule and their annual customer privacy notice obligations under the Rule.

DATES: Written comments must be received on or before June 3, 2019.

ADDRESSES: Interested parties may file a comment online or on paper by following the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Amendment to the Privacy of Consumer Financial Information Rule, 16 CFR part 313, Rulemaking No. R411016,'' on your comment and file your comment online at *https://www.regulations.gov* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex B), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex B), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: David Lincicum or Allison M. Lefrak, Division of Privacy and Identity Protection, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580, (202) 326–2773 or (202) 326–2804.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Statute and Regulation

The GLBA was enacted in 1999.[1] The GLBA, among other things, provides a framework for regulating the privacy practices of a broad range of financial institutions. The GLBA requires that financial institutions provide their customers with initial and annual notices regarding their privacy practices, and allow their customers to opt out of sharing their information with certain nonaffiliated third parties.

Rulemaking authority to implement the GLBA's privacy provisions was initially spread among multiple agencies. The Federal Reserve Board (''the Fed''), the Office of Comptroller of the Currency (''OCC''), the Federal Deposit Insurance Corporation (''FDIC''), and the Office of Thrift Supervision (''OTS'') jointly adopted final rules to implement the notice requirements of the GLBA in 2000.[2] The Commission, the National Credit Union Administration (''NCUA''), the Securities and Exchange Commission (''SEC''), and the Commodity Futures Trading Commission (''CFTC'') were part of the same interagency process, but each issued their rules separately.[3] In 2009, all those agencies jointly adopted a model form that financial institutions could use to provide the required initial and annual privacy disclosures.[4]

As originally promulgated, the FTC's Privacy Rule covered a broad range of non-bank financial institutions such as payday lenders, mortgage brokers, check cashers, debt collectors, real estate appraisers, certain motor vehicle dealers, and remittance transfer providers. In 2010, the Dodd-Frank Act[5] transferred the GLBA's privacy notice rulemaking authority from the Fed, NCUA, OCC, OTS, the FDIC, and the Commission (in part) to the Consumer Financial Protection Bureau (''CFPB''). The CFPB then restated the implementing regulations in Regulation P, 12 CFR part 1016, in late 2011 (''Regulation P'').[6] However, under section 1029 of the Dodd-Frank Act, the Commission retained rulemaking authority for certain motor vehicle dealers.[7] Thus, in 2012, the Commission issued a notice that it was retaining the implementing regulations governing privacy notices for motor vehicle dealers at 16 CFR part 313.[8]

Despite the transfer of general rulemaking authority for the Privacy Rule to the CFPB, the Commission and other agencies retain their existing enforcement authority under the GLBA.[9] In addition, the SEC and CFTC retain rulemaking authority with respect to securities and futures-related companies, respectively.[10] Accordingly, as part of this rulemaking process, the Commission has consulted and coordinated, or offered to consult, with those agencies that have rulemaking and/or enforcement authority under the GLBA, including the CFPB, SEC, CFTC, and the National Association of Insurance Commissioners (''NAIC'').[11]

On December 4, 2015, Congress amended the GLBA as part of the FAST Act. This amendment, titled Eliminate Privacy Notice Confusion,[12] added GLBA subsection 503(f). This subsection provides an exception under which financial institutions that meet certain conditions are not required to provide annual privacy notices to customers.

B. The Privacy Notice Requirements

As noted, the GLBA and the Privacy Rule require that motor vehicle dealers provide consumers with notices describing their privacy policies. Specifically, section 503 of the GLBA and the Privacy Rule require covered entities to provide an initial notice of these policies,[13] and then ''provide a clear and conspicuous notice to customers that accurately reflects [their] privacy policies and practices not less than annually during the continuation of the customer relationship.''[14]

Section 502 of the GLBA and the Privacy Rule require that initial and annual notices inform customers of their right to opt out of the sharing of nonpublic personal information with some types of nonaffiliated third parties.[15] For example, a customer has the right to opt out of allowing a motor vehicle dealer to sell her name and address to a nonaffiliated auto insurance company.[16] On the other hand, a motor vehicle dealer is not required to allow consumers to opt out of the dealer's

[1] Public Law 106–102, 113 Stat. 1338 (1999).

[2] 65 FR 35162 (June 1, 2000).

[3] 65 FR 33646 (May 24, 2000) (FTC final rule); 65 FR 31722 (May 18, 2000) (NCUA final rule); 65 FR 40334 (June 29, 2000) (SEC final rule); 66 FR 21236 (Apr. 27, 2001) (CFTC final rule).

[4] 74 FR 62890 (Dec. 1, 2009); *see also* 16 CFR 313.2, 313.4–313.9.

[5] Public Law 111–203, 124 Stat. 1376 (2010).

[6] 76 FR 79025 (Dec. 21, 2011).

[7] 12 U.S.C. 5519. The FTC retained rulemaking jurisdiction as to motor vehicle dealers that are predominantly engaged in the sale and servicing or the leasing and servicing of motor vehicles, excluding those dealers that directly extend credit to consumers and do not routinely assign the extensions of credit to an unaffiliated third party. For ease of reference, covered motor vehicle dealers are referenced herein as ''motor vehicle dealers.''

[8] 77 FR 22200, 22201 (April 13, 2012) (also rescinding those regulations for which rulemaking authority was transferred to the CFPB under the Dodd-Frank Act).

[9] 15 U.S.C. 6805(a).

[10] 15 U.S.C. 6804, 6809; 12 U.S.C. 1843(k)(4); 12 CFR 1016.1(b).

[11] *See* 15 U.S.C. 6804(a)(2).

[12] Public Law 114–94, sec. 75001, 129 Stat. 1312, 1787 (2015).

[13] 15 U.S.C. 6803; 16 CFR 313.4.

[14] 15 U.S.C. 6803; 16 CFR 313.5(a)(1).

[15] 15 U.S.C. 6802; 16 CFR 313.6(a)(6).

[16] 16 CFR 313.10(a).

sharing involving third-party service providers, joint marketing arrangements, maintenance and servicing of accounts, securitization, law enforcement and compliance, reporting to consumer reporting agencies, and certain other activities that are specified in the statute and regulation.[17] Accordingly, if a motor vehicle dealer limits its sharing to uses that do not trigger opt-out rights, it may provide an annual privacy notice to its customers that does not include information regarding opt-out rights.

Motor vehicle dealers also may include in the annual privacy notice information about certain consumer opt-out rights related to affiliate sharing under the Fair Credit Reporting Act (''FCRA''). First, section 603(d)(2)(A)(iii) of the FCRA allows the sharing of a consumer's information among affiliates, but only if the consumer is notified of such sharing and is given an opportunity to opt out.[18] Section 503(c)(4) of the GLBA and the Privacy Rule generally require motor vehicle dealers to incorporate any notifications and opt-out disclosures provided pursuant to section 603(d)(2)(A)(iii) of the FCRA into their initial and annual privacy notices.[19]

Second, section 624 of the FCRA and the FTC's Affiliate Marketing Rule[20] provide that an affiliate of a motor vehicle dealer that receives certain information about a consumer from the dealer may not use that information for marketing purposes, unless the consumer is provided with an opportunity to opt out of that use.[21] This requirement governs the use of information by an affiliate, not the sharing of information among affiliates, and thus is distinct from the affiliate sharing opt-out discussed above. The Affiliate Marketing Rule permits (but does not require) motor vehicle dealers to incorporate any opt-out disclosures provided under section 624 of the FCRA and the Affiliate Marketing Rule into the initial and annual privacy notices required by the GLBA.[22]

Finally, section 313.6(a)(8) of the Privacy Rule requires that the initial and annual notices briefly describe how motor vehicle dealers protect the nonpublic personal information they collect and maintain.

II. Proposed Revision of the Privacy Rule

A. The Consumer Financial Protection Bureau Rulemaking

In December 2011, the CFPB issued a Request for Information seeking specific suggestions for streamlining regulations that were transferred to the CFPB from other Federal agencies, including the annual privacy notice requirement.[23] After receiving numerous comments, in May 2014, the CFPB issued a proposed rule to amend its Regulation P to allow financial institutions to notify consumers that a privacy notice was available online, in certain enumerated circumstances.[24] The CFPB finalized its rulemaking in October 2014.[25]

B. The Commission's 2015 Proposed Rulemaking

On June 24, 2015, the Commission published a Notice of Proposed Rulemaking (''2015 NPRM'') proposing revisions to the Privacy Rule.[26] First, the Commission proposed a number of changes to comport with the Dodd-Frank Act revision of GLBA, which transferred rulemaking authority for most financial institutions to the CFPB. The Commission also proposed amending the Rule to allow motor vehicle dealers to notify their customers that a privacy notice is available online, under circumstances identical to those that had been adopted by the CFPB.[27]

The Commission received six comments from individuals and entities.[28]

C. The Passage of the FAST Act

As described above, on December 4, 2015, President Obama signed the FAST Act. The FAST Act contains a provision that modified the annual privacy notice requirement under the GLBA. The provision states that a financial institution is not required to provide an annual privacy notice if it: (1) Only shares non-public personal information with non-affiliated third parties in a manner that does not require an opt-out right be provided to customers (*e.g.,* if the institution discloses nonpublic personal information to a service provider or for fraud detection and prevention purposes), and (2) has not changed its policies and practices with respect to disclosing nonpublic personal information since it last provided a privacy notice to its customers.[29] This modification of the GLBA rendered the Commission's proposed changes to the Privacy Rule moot because those changes, if adopted, would have been in conflict with the revised statute.[30]

D. New Proposed Changes to the Privacy Rule

In light of this history, the Commission is issuing this notice of proposed rulemaking. The Commission now proposes to make three types of changes to the Privacy Rule: (1) Technical changes to the Rule to correspond to the reduced scope of the Rule due to Dodd-Frank Act changes, which primarily consist of removing references that do not apply to motor vehicle dealers; (2) modifications to the annual privacy notice requirements to reflect the changes made to the GLBA by the FAST Act; and (3) a modification to the scope and definition of ''financial institution'' to include entities engaged in activities that are incidental to financial activities, which would bring the Rule into accord with the CFPB's Regulation P.

1. Technical Changes To Correspond to Statutory Changes Resulting From the Dodd-Frank Act

The Commission adopted the scope of, and definitions in, the original Privacy Rule at a time when it had rulemaking authority for the Privacy Rule over a broader group of non-bank ''financial institutions'' as defined by the GLBA. While the Dodd-Frank Act did not change the Commission's enforcement authority for the privacy notice obligations of the GLBA, it did amend the Commission's rulemaking authority under the GLBA such that the Privacy Rule only applies to motor vehicle dealers.[31] The amendments in the Dodd-Frank Act necessitate certain technical revisions to the Privacy Rule to ensure that the regulation is consistent with the text of the amended GLBA.[32] For example, retaining examples that apply to entities other

[17] 15 U.S.C. 6802(b)(2), 6802(e); 16 CFR 313.13–313.15.

[18] 15 U.S.C. 1681a(d)(2)(A)(iii).

[19] 15 U.S.C. 6803(c)(4); 16 CFR 313.6(a)(7).

[20] 16 CFR 680.1–680.28.

[21] 15 U.S.C. 1681s–3. The FTC's Affiliate Marketing Rule applies to motor vehicle dealers. *See* 77 FR 22200 (Apr. 13, 2012). The FTC also enforces the CFPB's Regulation V's Affiliate Marketing Rule, 12 CFR part 1022, subpart C, for other entities over which the FTC has enforcement authority under the FCRA.

[22] 16 CFR 680.23(b).

[23] 76 FR 75825, 75828 (Dec. 5, 2011).

[24] 79 FR 27214 (May 14, 2014) (CFPB Notice of Proposed Rulemaking).

[25] 79 FR 64057 (Oct. 28, 2014).

[26] 80 FR 36267 (June 24, 2015).

[27] *See* 79 FR 64057 (Oct. 28, 2014).

[28] The comments are posted at: *https://www.ftc.gov/policy/public-comments/2015/06/initiative-614.* The Commission assigned each comment a number appearing after the name of the commenter and the date of submission.

[29] 15 U.S.C. 6803(f).

[30] In 2016, the CFPB issued a proposed amendment to Regulation P that would alter the annual notice requirement to conform to the statutory changes. 81 FR 44801 (July 11, 2016). The rule became final in September 2018. 83 FR 40945 (Sept. 17, 2018).

[31] For other types of financial institutions over which the Commission has enforcement authority under the GLBA, the Commission now enforces the CFPB's Regulation P.

[32] 15 U.S.C. 6804(1)(C).

than motor vehicle dealers may lead to confusion about the existing, narrower scope of the Privacy Rule. Accordingly, the Commission proposes to modify the Privacy Rule to provide clearer guidance to financial institutions that are covered motor vehicle dealers.[33]

The proposed amendment to section 313.1(b) narrows the description of the scope of the Privacy Rule to those entities set forth in the Dodd-Frank Act[34] that are predominantly engaged in the sale and servicing of motor vehicles or the leasing and servicing of motor vehicles, excluding those dealers that directly extend credit to consumers and do not routinely assign the extensions of credit to an unaffiliated third party. It also removes the reference in the Rule's scope to ''other persons'': Although the Commission continues to have enforcement authority over ''other persons'' covered by the CFPB's Regulation P, the Commission no longer has rulemaking authority for the Privacy Rule over ''other persons.''[35] In addition, the Commission proposes to eliminate from section 313.1(b) the note indicating that (1) the Privacy Rule does not modify, limit, or supersede the standards under the Health Insurance Portability and Accountability Act of 1996, and (2) if a financial institution that is an institution of higher education is in compliance with the Federal Educational Rights and Privacy Act (''FERPA'') and its implementing regulations, such institution shall be deemed in compliance with the Privacy Rule. The Commission does not believe these provisions will apply to motor vehicle dealers covered by the Rule and should be removed to improve clarity. The Commission invites comments on whether these provisions are relevant to motor vehicle dealers and should be retained.

The proposed amendments to section 313.3 also remove any examples that are not likely to apply to motor vehicle dealers. To help companies understand whether and how the Rule applies to them, the Rule includes examples of financial institutions in section 313.3(k)(2). The current examples refer to types of activities that motor vehicle dealers typically do not engage in. Therefore, leaving those examples in the Rule may lead to confusion about the Rule's current scope.

The proposed amendments also remove certain examples from the definition of ''consumer'' in section 313.3(e)(2). These examples do not apply because motor vehicle dealers do not provide the types of services provided in the examples, such as financial, investment, or economic advisory services or serving as the trustee of a trust.

Likewise, the proposed amendments remove certain examples of establishing a customer relationship from section 313.4(c)(3)(i). The removed examples do not apply to customers of motor vehicle dealers, because such activities are not related to the sale or leasing of motor vehicles. These include creating credit card accounts, providing investment advice or tax counseling, providing mortgages, collecting debts from other financial institutions, and providing websites for consumers to review all of their on-line financial accounts with other financial institutions.

Finally, the proposed amendments remove certain examples of termination of customer relationships from section 313.5(b)(2). As with previously discussed proposed amendments, the removed examples concern customer relationships based on services that motor vehicle dealers do not provide. These include credit card accounts, credit counseling services, tax preparation, and real estate settlement. The removal of these inapplicable examples will increase the clarity of the rule by focusing on matters that are relevant to the regulated financial institutions. Removing these examples will not alter the substance of the underlying definitions or provisions of the rule, which will have the same reach and applicability as before the revisions. The changes are intended to improve clarity, not to alter substance. The Commission invites comments on whether any of the omitted examples should be retained.

Although the Dodd-Frank Act altered the Commission's rulemaking authority with respect to the Privacy Rule, it did not alter the Commission's rulemaking authority for the Safeguards Rule. For the Safeguards Rule, the Commission continues to have rulemaking authority over a broad range of non-bank financial institutions. The Safeguards Rule, however, currently incorporates by reference the definitions contained in the Privacy Rule, including all of the examples of financial institutions listed in the existing Privacy Rule.[36] Accordingly, while the Commission proposes to modify the Privacy Rule definitions to include examples applicable only to motor vehicle dealers, the Commission has also proposed in a separate concurrent NPRM to amend the Safeguards Rule to import definitions of relevant terms and examples from the current version of the Privacy Rule.[37]

2. Modifications to the Annual Privacy Notice To Reflect Statutory Changes Resulting From the FAST Act

The Commission also proposes changes to the Privacy Rule provisions governing how motor vehicle dealers should deliver annual privacy notices. These changes implement statutory changes resulting from the enactment of the FAST Act and replace those set forth in the 2015 NPRM.

Several commenters opined on the proposed changes to notice delivery in the 2015 NPRM. Those comments have been rendered obsolete by the statutory changes. The current proposed rule implements the changes set forth in the FAST Act.

Section 313.5(a)(1)—General Rule

The proposed section 313.5(a)(1) notes that section 313.5(e) provides an exception to the general rule requiring the delivery of annual notices.

Section 313.5(e)

This proposed new section sets forth the exception to the annual privacy notice requirement. The Commission adopts the reasoning and changes set forth by the CFPB in its amendments to Regulation P to adopt the FAST Act changes.[38] First, proposed section 313.5(e)(1)(i) sets forth that the financial institution must share nonpublic personal information only in accordance with the provisions of sections 313.13, 313.14, and 313.15, none of which require an opt-out opportunity be provided to customers. Second, proposed section 313.5(e)(1)(ii) states that the financial institution must also not have changed its disclosure policies and practices that were contained in its most recent privacy notice to customers.

Proposed section 313.5(e)(2) sets forth the timing for delivering an annual notice if a financial institution no longer meets requirements for the exception and must resume delivery of annual notices. There are two scenarios under which a financial institution would need to resume delivering annual notices: (1) Where the change in its policies trigger the existing requirement

[33] The Commission also proposes a change to 16 CFR 313.3(j) removing the Director of the Office of Thrift Supervision from the definition of ''Federal Functional Regulators,'' as the Office of Thrift Supervision no longer exists.

[34] 12 U.S.C. 5519.

[35] The Commission also proposes to amend 16 CFR 313.15(a)(4) to add the CFPB to the list of law enforcement agencies to which financial institutions are permitted to share information to the extent permitted by law.

[36] 16 CFR 314.2(a).

[37] The NPRM relating to the Safeguards Rule is published elsewhere in this issue of the **Federal Register**.

[38] *See* 81 FR 44801 (July 10, 2016).

to issue a revised privacy notice, as required by section 313.8; and (2) where the change does not trigger a need for the financial institution to issue a revised notice under section 313.8. These two situations are addressed by proposed sections 313.5(e)(2)(i) and (ii), respectively. In the first situation, the revised notice issued by the financial institution acts as an initial privacy notice for the purposes of the timing of future annual notices. In the second situation, the financial institution must provide an annual notice to customers within 100 days of the change in policies or practices. Proposed section 313.5(e)(2)(iii) sets forth an example for both scenarios.

1. Modifications To Scope and Definitions To Bring the Rule Into Accord With Regulation P

Whether a company is a ''financial institution'' is determined by the types of activities in which the company engages. When first promulgating the Privacy Rule, the Commission determined that companies engaged in activities that are ''incidental to financial activities'' would not be considered ''financial institutions.'' [39] The Commission was the only agency to adopt this restrictive definition in its Privacy Rule, while the other agencies included incidental activities.[40] In addition, the Commission decided that activities that were determined to be financial in nature after the enactment of the GLBA would not be automatically included in its Privacy Rule; rather, the Commission would have to take additional action to include them.[41] The effect of these two decisions was to limit the activities covered by the Commission's rules to those set out in 12 CFR 225.28 as it existed in 1999, and to exclude any activities later determined by the Fed to be financial activities or incidental to those activities.[42]

The Commission proposes modifying the definition of ''financial institution'' to harmonize the Privacy Rule with other agencies' rules. The Commission proposes to amend section 313.1(b) to include companies that engage in activities that are financial in nature or incidental to such financial activities. Likewise, it proposes to amend the definition of ''financial institution'' in section 313.3(k), to include any institution the business of which is engaging in an activity that is financial in nature or incidental to such financial activities.[43] The effect of this proposed amendment would be to cause ''finders'' to be included in this definition, thereby bringing the Privacy Rule into harmony with the scope of entities covered by other agencies under Regulation P. It would not bring any other activities under the coverage the definition because the Fed has not determined any other activity other than ''finding'' to be financial in nature or incidental to such activity since the enactment of the GLBA. In practice, the Commission expects that this change to the Privacy Rule will have little to no effect because of the already narrow scope of the Rule: It is not clear that there are any motor vehicle dealers that would be covered by this rule whose only activity that would qualify them as a financial institution is the act of finding, as most motor vehicle dealers are more directly involved in obtaining financing for their customers. Nevertheless, the Commission believes this change is important to keep the Rule consistent with the Safeguards Rule and other agencies' GLBA implementing rules.

The Commission has not previously requested comment on revising the definition of ''financial institution'' in this way for the Privacy Rule. Through this NPRM, it does so here. Specifically, the Commission seeks information on (1) whether any entities function as ''finders'' for motor vehicle dealers, and if so how many; (2) whether such finders collect or maintain customer information as defined by the Rule; and (3) the costs and benefits, including the costs and benefits to finders and consumers, of this proposed amendment.

III. Request for Comment

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before June 3, 2019. Write ''Amendment to the Privacy of Consumer Financial Information Rule, 16 CFR part 313, Rulemaking No. R411016'' on the comment. Your comment, including your name and your state, will be placed on the public record of this proceeding, including, to the extent practicable, the *https://www.regulations.gov* website.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comment online. To make sure that the Commission considers your online comment, you must file it at *https://www.regulations.gov* by following the instructions on the web-based form.

If you file your comment on paper, write ''Amendment to the Privacy of Consumer Financial Information Rule, 16 CFR part 313, Rulemaking No. R411016,'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex B), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex B), Washington, DC 20024. If possible, please submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible website, *https://www.regulations.gov/,* you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential,'' as provided by section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2), including in particular, competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comments to be withheld from the

[39] *See* 16 CFR 313.3(k); *see also* 65 FR 33646, 33654 (May 24, 2000).

[40] The Commission also added the requirement that an entity must be ''significantly engaged'' in the financial activity to be considered a financial institution under the Privacy Rule. 16 CFR 313.3(k). The Commission is not proposing to change this requirement.

[41] 65 FR 33646, 33654 n.23 (May 24, 2000).

[42] *Id.*

[43] This proposal is also consistent with the agency's concurrent proposal to revise the Safeguards Rule in the same manner.

public record.[44] Your comment will be kept confidential only if the FTC General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at *www.regulations.gov,* we cannot redact or remove your comment from the FTC website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the Commission website at *https://www.ftc.gov/* to read this document and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before June 3, 2019. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

IV. Communications by Outside Parties to the Commissioners or Their Advisors

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding, from any outside party to any Commissioner or Commissioner's advisor, will be placed on the public record.[45]

V. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA),[46] 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 Commission 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.

This proposal would amend 16 CFR part 313. The collections of information related to the Privacy Rule and the FAST Act statutory exceptions to the Rule's annual notice requirement have been previously reviewed and approved by OMB in accordance with the PRA.[47]

Under the existing clearance, the FTC has attributed to itself the estimated burden regarding all motor vehicle dealers and then shares equally the remaining estimated PRA burden with the CFPB for other types of financial institutions for which both agencies have enforcement authority regarding the GLBA Privacy Rule.[48]

The proposed amendments do not modify or add to information collection requirements that were previously approved by OMB. First, the Commission anticipates that the proposed expansion of the definition of ''financial institution'' to include entities engaged in activities that are incidental to financial activities will have little to no effect. It is not clear that any finders are in the business of linking consumers with financing through motor vehicle dealers, as opposed to other types of financial institutions such as payday lenders or mortgage lenders.

Second, the proposed removal of certain examples provided in the Rule that are not applicable to motor vehicle dealers will have no impact on existing information collection requirements.

Therefore, the Commission does not believe that the proposed amendments would substantially or materially modify any ''collections of information'' as defined by the PRA.

The Commission seeks comment on whether there are any finders in existence that would be covered by the proposed Rule. If there are such businesses, the Commission will seek OMB clearance as appropriate.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires an agency to either provide an Initial Regulatory Flexibility Analysis (''IRFA'') with a proposed rule, or certify that the proposed rule will not have a significant impact on a substantial number of small entities.[49] The Commission does not expect that this Rule, if adopted, would have the threshold impact on small entities. First, most of the burdens flow from the mandates of the GLBA, not from the specific provisions of the proposed Rule. Second, the Commission does not expect the proposal to impose costs on small motor vehicle dealers because the amendments are primarily for clarification purposes and should not result in any increased burden on any motor vehicle dealer. Thus, a small entity that complies with current law need not take any different or additional action if the proposal is adopted. Nonetheless, the Commission has determined that it is appropriate to publish an Initial Regulatory Flexibility Analysis in order to inquire into the impact of the proposed Rule on small entities. The Commission does not believe that there are any small entities engaged in finding for motor vehicle financing that would now be covered as a result of the modified definition of ''financial institution.'' However, the Commission invites comment on this issue.

1. Reasons for the Proposed Rule

To address the Dodd-Frank Act and FAST Act changes the Commission proposes to change the Privacy Rule's scope and definition of ''financial institution''; change the annual notice requirement; and remove certain examples provided in the Rule that are not applicable to motor vehicle dealers. These changes will make the current, narrow scope of the Rule clearer. Additionally, the Commission proposes modifying the definition of ''financial institution'' to harmonize the Privacy Rule with other agencies' rules by including ''activities incidental to financial activities'' as a financial activity. This change would bring ''finders'' within the scope of the Rule.

2. Statement of Objectives and Legal Basis

The objectives of the proposed Rule are discussed above. The legal basis for the proposed Rule is section 501(b) of the GLBA.

3. Description of Small Entities to Which the Rule Will Apply

Determining a precise estimate of the number of small entities [50]—including newly covered entities under the modified definition of financial institution—is not readily feasible. Financial institutions covered by the Rule include certain motor vehicle dealers. If the proposed Rule is finalized, finders will also be covered.

[44] *See* 16 CFR 4.9(c).

[45] 16 CFR 1.26(b)(5).

[46] 44 U.S.C. 3501 *et seq.*

[47] The FTC has current clearance through November 30, 2020. The OMB Control Number is 3084–0121.

[48] 82 FR 48081.

[49] 5 U.S.C. 603–605.

[50] The U.S. Small Business Administration Table of Small Business Size Standards Matched to North American Industry Classification System Codes (NAICS) are generally expressed in either millions of dollars or number of employees. A size standard is the largest that a business can be and still qualify as a small business for Federal Government programs. For the most part, size standards are the annual receipts or the average employment of a firm. New car dealers (NAICS code 441100) are classified as small if they have fewer than 200 employees. Used car dealers (NAICS code 441120) are classified as small if their annual receipts are $25 million or less. Recreational vehicle dealers, boat dealers, motorcycle, ATV and all other motor vehicle dealers (NAICS codes 441210, 441222 and 441228) are classified as small if their annual receipts are $32.5 million or less. The 2017 Table of Small Business Size Standards is available at *https://www.sba.gov/sites/default/files/files/Size_Standards_Table_2017.pdf.*

The Commission requests comment and information on whether there are any finders in existence that would be covered by the proposed Rule.

4. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The Commission does not believe that the proposed Rule would impose any new or substantively revised ''collections of information'' as defined by the PRA. Rather, the Commission believes that the proposed amendments would have the overall effect of reducing the currently cleared estimated burden for the information collections associated with the Privacy Rule annual notice. The Commission invites comment on the costs to newly covered financial institutions—if there are any—of complying with the Rule.

5. Identification of Duplicative, Overlapping, or Conflicting Federal Rules

The Commission's proposal to modify the definition of ''financial institution'' harmonizes the Privacy Rule with other agencies' rules. The effect of this proposed amendment, as discussed above, would be to cause ''finders'' to be covered by the Rule, thereby bringing the scope of the Privacy Rule into harmony with the scope of entities covered by other agencies under Regulation P. The Commission believes that this proposal does not create conflicting or duplicative obligations on small entities. As stated previously, the Commission does not believe there are any newly covered financial institutions resulting from the proposed definitional modification. However, the Commission is requesting comment on the extent to which other federal standards involving privacy notices may duplicate and/or satisfy or possibly conflict with the Rule's requirements for any newly covered financial institutions.

6. Discussion of Significant Alternatives

As stated previously, the Commission does not believe there are any newly covered financial institutions resulting from the proposed definitional modification. Moreover, the Commission believes that the other proposed amendments would have the overall effect of reducing the burden for all covered entities associated with the Privacy Rule annual notice. The proposed amendments do not reduce the flexibility already present in the existing Rule, which allows notices to be provided in a variety of ways, including electronically in some circumstances. As to the core requirements of the proposed Rule, they come from GLBA itself, as amended by the Dodd-Frank and the FAST Act. The statute prescribes the definition of financial institutions to be covered by the Rule and sets forth the specific requirements, which the Commission cannot modify to ease burdens on small entities. Therefore the Commission does not believe that any alternatives for small entities are required or appropriate. However, the Commission welcomes comment on any significant alternative consistent with the GLBA that would minimize the impact of the proposed Rule on small entities—specifically institutions that would be newly covered financial institutions—if there are any.

List of Subjects in 16 CFR Part 313

Consumer protection, Credit, Data protection, Privacy, Trade practices.

For the reasons stated above, the Federal Trade Commission proposes to amend 16 CFR part 313 as follows:

■ 1. Revise the authority section for part 313 to read as follows:

Authority: 15 U.S.C. 6801 *et seq.,* 12 U.S.C. 5519.

■ 2. In § 313.1, revise paragraph (b) to read as follows:

§ 313.1 Purpose and scope.

* * * * *

(b) *Scope.* This part applies only to nonpublic personal information about individuals who obtain financial products or services primarily for personal, family or household purposes from the institutions listed below. This part does not apply to information about companies or about individuals who obtain financial products or services for business, commercial, or agricultural purposes. This part applies to those ''financial institutions'' over which the Federal Trade Commission (''Commission'') has rulemaking authority pursuant to section 504(a)(1)(C) of the Gramm-Leach-Bliley Act. An entity is a ''financial institution'' if its business is engaging in an activity that is financial in nature or incidental to such financial activities as described in section 4(k) of the Bank Holding Company Act of 1956, 12 U.S.C. 1843(k), which incorporates by reference activities enumerated by the Federal Reserve Board in 12 CFR 225.28 and 12 CFR 225.86. The ''financial institutions'' subject to the Commission's rulemaking authority are any persons described in 12 U.S.C. 5519 that are predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both. They are referred to in this part as ''*You.*'' Excluded from the coverage of this regulation are motor vehicle dealers described in 12 U.S.C. 5519(b) that directly extend to consumers retail credit or retail leases involving motor vehicles in which the contract governing such extension of retail credit or retail leases is not routinely assigned to an unaffiliated third party finance or leasing source.

■ 3. In § 313.3, revise paragraphs (e), (i), (j), (k) and (q), to read as follows:

§ 313.3 Definitions.

* * * * *

(e)(1) *Consumer* means an individual who obtains or has obtained a financial product or service from you that is to be used primarily for personal, family, or household purposes, or that individual's legal representative.

(2) *Examples*—(i) An individual who applies to you for credit for personal, family, or household purposes is a consumer of a financial service, regardless of whether the credit is extended.

(ii) An individual who provides nonpublic personal information to you in order to obtain a determination about whether he or she may qualify for a loan to be used primarily for personal, family, or household purposes is a consumer of a financial service, regardless of whether the loan is extended.

(iii) If you hold ownership or servicing rights to an individual's loan that is used primarily for personal, family, or household purposes, the individual is your consumer, even if you hold those rights in conjunction with one or more other institutions. (The individual is also a consumer with respect to the other financial institutions involved.) An individual who has a loan in which you have ownership or servicing rights is your consumer, even if you, or another institution with those rights, hire an agent to collect on the loan.

(iv) An individual who is a consumer of another financial institution is not your consumer solely because you act as agent for, or provide processing or other services to, that financial institution.

(v) An individual is not your consumer solely because he or she is a participant or a beneficiary of an employee benefit plan that you sponsor or for which you act as a trustee or fiduciary.

* * * * *

(i)(1) *Customer relationship* means a continuing relationship between a consumer and you under which you provide one or more financial products or services to the consumer that are to be used primarily for personal, family, or household purposes.

(2) *Examples*—(i) *Continuing relationship.* A consumer has a continuing relationship with you if the consumer:

(A) Has a credit or investment account with you;

(B) Obtains a loan from you;

(C) Purchases an insurance product from you;

(D) Enters into an agreement or understanding with you whereby you undertake to arrange credit to purchase a vehicle for the consumer;

(E) Enters into a lease of personal property on a non-operating basis with you; or

(F) Has a loan for which you own the servicing rights.

(ii) *No continuing relationship.* A consumer does not, however, have a continuing relationship with you if:

(A) The consumer obtains a financial product or service from you only in isolated transactions, such as cashing a check with you or making a wire transfer through you;

(B) You sell the consumer's loan and do not retain the rights to service that loan; or

(C) The consumer obtains one-time personal appraisal services from you.

(j) *Federal functional regulator* means:

(1) The Board of Governors of the Federal Reserve System;

(2) The Office of the Comptroller of the Currency;

(3) The Board of Directors of the Federal Deposit Insurance Corporation;

(4) The National Credit Union Administration Board; and

(5) The Securities and Exchange Commission.

(k)(1) *Financial institution* means any institution the business of which is engaging in an activity that is financial in nature or incidental to such financial activities as described in section 4(k) of the Bank Holding Company Act of 1956, 12 U.S.C. 1843(k). An institution that is significantly engaged in financial activities is a financial institution.

(2) *Example of financial institution.* An automobile dealership that, as a usual part of its business, leases automobiles on a nonoperating basis for longer than 90 days is a financial institution with respect to its leasing business because leasing personal property on a nonoperating basis where the initial term of the lease is at least 90 days is a financial activity listed in 12 CFR 225.28(b)(3) and referenced in section 4(k)(4)(F) of the Bank Holding Company Act.

(3) *Financial institution* does not include entities that engage in financial activities but that are not significantly engaged in those financial activities.

(4) *Example of entities that are not significantly engaged in financial activities.* A motor vehicle dealer is not a financial institution merely because it accepts payment in the form of cash, checks, or credit cards that it did not issue.

* * * * *

(q) *You* includes each ''financial institution'' over which the Commission has rulemaking authority pursuant to section 504(a)(1)(C) of the Gramm-Leach-Bliley Act (15 U.S.C. 6804(a)(1)(C)).

■ 4. In § 313.4, revise paragraphs (c)(3)(i) and (e), to read as follows:

§ 313.4 Initial privacy notice to consumers required.

* * * * *

(c) * * *

(3)(i) *Examples of establishing a customer relationship.* You establish a customer relationship when the consumer:

(A) Executes the contract to obtain credit from you or purchase insurance from you; or

(B) Executes the lease for personal property with you.

* * * * *

(e) *Exceptions to allow subsequent delivery of notice.* (1) You may provide the initial notice required by paragraph (a)(1) of this section within a reasonable time after you establish a customer relationship if:

(i) Establishing the customer relationship is not at the customer's election; or

(ii) Providing notice not later than when you establish a customer relationship would substantially delay the customer's transaction and customer agrees to receive the notice at a later time.

(2) *Examples of exceptions—(i) Substantial delay of customer's transaction.* Providing notice not later than when you establish a customer relationship would substantially delay the customer's transaction when you and the individual agree over the telephone to enter into a customer relationship involving prompt delivery of the financial product or service.

(ii) *No substantial delay of customer's transaction.* Providing notice not later than when you establish a customer relationship would not substantially delay the customer's transaction when the relationship is initiated in person at your office or through other means by which the customer may view the notice, such as through a website.

* * * * *

■ 5. In § 313.5, revise paragraphs (a)(1) and (b)(2) and add paragraph (e) to read as follows:

§ 313.5 Annual privacy notice to customers required.

(a)(1) *General rule.* Except as provided by paragraph (e) of this section, you must provide a clear and conspicuous notice to customers that accurately reflects your privacy policies and practices not less than annually during the continuation of the customer relationship. *Annually* means at least once in any period of 12 consecutive months during which that relationship exists. You may define the 12-consecutive-month period, but you must apply it to the customer on a consistent basis.

* * * * *

(b) * * *

(2) *Examples.* Your customer becomes a former customer when:

(i) In the case of a closed-end loan, the customer pays the loan in full, you charge off the loan, or you sell the loan without retaining servicing rights;

(ii) In the case of vehicle loan brokering services, your customer has obtained a loan through you (and you no longer provide any statements or notices to the customer concerning that relationship), or has ceased using your services for such purposes;

(iii) In cases where there is no definitive time at which the customer relationship has terminated, you have not communicated with the customer about the relationship for a period of 12 consecutive months, other than to provide annual privacy notices or promotional material.

* * * * *

(e) *Exception to annual privacy notice requirement.* (1) *When exception available.* You are not required to deliver an annual privacy notice if you:

(i) Provide nonpublic personal information to nonaffiliated third parties only in accordance with the provisions of § 313.13, § 313.14, or § 313.15; and

(ii) Have not changed your policies and practices with regard to disclosing nonpublic personal information from the policies and practices that were disclosed to the customer under § 313.6(a)(2) through (5) and (9) in the most recent privacy notice provided pursuant to this part.

(2) *Delivery of annual privacy notice after financial institution no longer meets requirements for exception.* If you have been excepted from delivering an annual privacy notice pursuant to paragraph (e)(1) of this section and change your policies or practices in such a way that you no longer meet the requirements for that exception, you must comply with paragraph (e)(2)(i) or (ii) of this section, as applicable.

(i) *Changes preceded by a revised privacy notice.* If you no longer meet the requirements of paragraph (e)(1) of this section because you change your policies or practices in such a way that § 313.8 requires you to provide a revised privacy notice, you must provide an annual privacy notice in accordance with the timing requirement in paragraph (a) of this section, treating the revised privacy notice as an initial privacy notice.

(ii) *Changes not preceded by a revised privacy notice.* If you no longer meet the requirements of paragraph (e)(1) of this section because you change your policies or practices in such a way that § 313.8 does not require you to provide a revised privacy notice, you must provide an annual privacy notice within 100 days of the change in your policies or practices that causes you to no longer meet the requirement of paragraph (e)(1).

(iii) *Examples.* (A) You change your policies and practices in such a way that you no longer meet the requirements of paragraph (e)(1) of this section effective April 1 of year 1. Assuming you define the 12-consecutive-month period pursuant to paragraph (a) of this section as a calendar year, if you were required to provide a revised privacy notice under § 313.8 and you provided that notice on March 1 of year 1, you must provide an annual privacy notice by December 31 of year 2. If you were not required to provide a revised privacy notice under § 313.8, you must provide an annual privacy notice by July 9 of year 1.

(B) You change your policies and practices in such a way that you no longer meet the requirements of paragraph (e)(1) of this section, and so provide an annual notice to your customers. After providing the annual notice to your customers, you once again meet the requirements of paragraph (e)(1) of this section for an exception to the annual notice requirement. You do not need to provide additional annual notice to your customers until such time as you no longer meet the requirements of paragraph (e)(1) of this section.

■ 6. In § 313.15, revise paragraph (a)(4) to read as follows:

§ 313.15 Other exceptions to notice and opt out requirements.

(a) * * *

(4) To the extent specifically permitted or required under other provisions of law and in accordance with the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 *et seq.*), to law enforcement agencies (including the Consumer Financial Protection Bureau, a federal functional regulator, the Secretary of the Treasury, with respect to 31 U.S.C. chapter 53, subchapter II (Records and Reports on Monetary Instruments and Transactions) and 12 U.S.C. chapter 21 (Financial Recordkeeping), a State insurance authority, with respect to any person domiciled in that insurance authority's State that is engaged in providing insurance, and the Federal Trade Commission), self-regulatory organizations, or for an investigation on a matter related to public safety.

* * * * *

By direction of the Commission.

April J. Tabor,

Acting Secretary.

[FR Doc. 2019–06039 Filed 4–3–19; 8:45 am]

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FEDERAL TRADE COMMISSION

16 CFR Part 314

RIN 3084–AB35

Standards for Safeguarding Customer Information

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking; request for public comment.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') requests public comment on its proposal to amend the Standards for Safeguarding Customer Information (''Safeguards Rule'' or ''Rule''). The proposal contains five main modifications to the existing Rule. First, it adds provisions designed to provide covered financial institutions with more guidance on how to develop and implement specific aspects of an overall information security program. Second, it adds provisions designed to improve the accountability of financial institutions' information security programs. Third, it exempts small businesses from certain requirements. Fourth, it expands the definition of ''financial institution'' to include entities engaged in activities that the Federal Reserve Board determines to be incidental to financial activities. Finally, the Commission proposes to include the definition of ''financial institution'' and related examples in the Rule itself rather than cross-reference them from a related FTC rule, the Privacy of Consumer Financial Information Rule.

DATES: Written comments must be received on or before June 3, 2019.

ADDRESSES: Interested parties may file a comment online or on paper by following the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Safeguards Rule, 16 CFR part 314, Project No. P145407,'' on your comment and file your comment online at *https://www.regulations.gov* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex B), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex B), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: David Lincicum or Allison M. Lefrak, Division of Privacy and Identity Protection, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580, (202) 326–2773 or (202) 326–2804.

SUPPLEMENTARY INFORMATION:

I. Background

The Gramm Leach Bliley Act (''GLB'' or ''GLBA'') was enacted in 1999.[1] The GLBA provides a framework for regulating the privacy and data security practices of a broad range of financial institutions. Among other things, the GLBA requires financial institutions to provide customers with information about the institutions' privacy practices and about their opt-out rights, and to implement security safeguards for customer information.

Subtitle A of Title V of the GLBA required the Commission and other federal agencies to establish standards for financial institutions relating to administrative, technical, and physical safeguards for certain information.[2] Pursuant to the Act's directive, the Commission promulgated the Safeguards Rule in 2002. The Safeguards Rule became effective on May 23, 2003.

The Safeguards Rule requires a financial institution to develop, implement, and maintain a comprehensive information security program that consists of the administrative, technical, and physical safeguards the financial institution uses to access, collect, distribute, process, protect, store, use, transmit, dispose of, or otherwise handle customer information.[3] The information security program must be written in one or more

[1] Public Law 106–102, 113 Stat. 1338 (1999).

[2] *See* 15 U.S.C. 6801(b), 6805(b)(2).

[3] 16 CFR 314.2(c).

readily accessible parts.[4] The safeguards set forth in the program must be appropriate to the size and complexity of the financial institution, the nature and scope of its activities, and the sensitivity of any customer information at issue.[5] The safeguards must also be reasonably designed to ensure the security and confidentiality of customer information, protect against any anticipated threats or hazards to the security or integrity of the information, and protect against unauthorized access to or use of such information that could result in substantial harm or inconvenience to any customer.[6]

In order to develop, implement, and maintain its information security program, a financial institution must identify reasonably foreseeable internal and external risks to the security, confidentiality, and integrity of customer information that could result in the unauthorized disclosure, misuse, alteration, destruction, or other compromise of such information, including in the areas of: 1. Employee training and management; 2. information systems, including network and software design, as well as information processing, storage, transmission, and disposal; and 3. detecting, preventing, and responding to attacks, intrusions, or other systems failures.[7] The financial institution must then design and implement safeguards to control the risks identified through the risk assessment, and must regularly test or otherwise monitor the effectiveness of the safeguards' key controls, systems, and procedures.[8] The financial institution is also required to evaluate and adjust its information security program in light of the results of this testing and monitoring, as well as any material changes in its operations or business arrangements, or any other circumstances that it knows or has reason to know may have a material impact on its information security program.[9] The financial institution must also designate an employee or employees to coordinate the information security program.[10]

Finally, the Safeguards Rule requires financial institutions to take reasonable steps to select and retain service providers that are capable of maintaining appropriate safeguards for customer information and require those service providers by contract to implement and maintain such safeguards.[11]

When the Commission issued the Rule in 2002, it opted to provide general requirements and guidance for the required information security program, without providing detailed descriptions of what the information security program should contain.[12] It took this approach in order to provide financial institutions with the flexibility to shape the information security programs to their particular business and to allow the programs to adapt to changes in technology and threats to the security and integrity of customer information.[13] While the Commission believes the proposed amendments continue to provide companies with flexibility, they also attempt to provide more detailed guidance as to what an appropriate information security program entails.

II. Regulatory Review of the Safeguards Rule

On August 29, 2016, the Commission solicited comments on the Safeguards Rule as part of its periodic review of its rules and guides.[14] The Commission sought comment on a number of general issues, including the economic impact and benefits of the Rule; possible conflicts between the Rule and state, local, or other federal laws or regulations; and the effect on the Rule of any technological, economic, or other industry changes. The Commission received 28 comments from individuals and entities representing a wide range of viewpoints.[15] Most commenters agreed that there is a continuing need for the Rule and that it benefits consumers and competition.[16] The Commission also generally asked commenters to weigh in on: 1. Whether the Commission should add more specific requirements for information security programs to the Rule; 2. whether the Rule should require the inclusion of an incident response plan; 3. whether the Rule should reference or incorporate any other information security standards or framework, such as the National Institute of Standards and Technology's Cybersecurity Framework or the Payment Card Industry Data Security Standard; 4. whether the Rule should contain its own definition of ''financial institution'' rather than cross-reference the definition set forth in the Privacy Rule; and 5. whether the definition of ''financial institution'' should be expanded.

1. Whether the Safeguards Rule Should Include More Specific Requirements for Information Security Programs

Several commenters urged the Commission not to add more specific and prescriptive requirements for information security programs.[17] These commenters stated that financial institutions are familiar with the Rule in its current form and have established practices and policies in reliance on it;[18] that preserving the Rule's flexible guidelines for information security plans enables financial institutions to adapt quickly to the rapidly changing cybersecurity landscape;[19] and that additional prescriptive requirements for information security plans would negatively impact innovation.[20]

Some commenters asserted that a more prescriptive regulatory approach for information security programs in the Rule would not necessarily make institutions more secure and cautioned that regulation that adopts a checklist approach to information security plans risks creating complacency among companies.[21] A few commenters proposed that rather than amending the Rule to add more specific and prescriptive requirements for information security plans, the Commission should promote self-regulation as an appropriate tool to

[4] 16 CFR 314.3(a).

[5] 16 CFR 314.3(a), (b).

[6] 16 CFR 314.3(a), (b).

[7] 16 CFR 314.4(b).

[8] 16 CFR 314.4(c).

[9] 16 CFR 314.4(e).

[10] 16 CFR 314.4(a).

[11] 16 CFR 314.4(d).

[12] *See* Standards for Safeguarding Customer Information, Final Rule, 67 FR 36484 (May 23, 2002).

[13] *Id.*

[14] Safeguards Rule, Request for Comment, 81 FR 61632 (Sept. 7, 2016).

[15] The comments are posted at: *https://www.ftc.gov/policy/public-comments/initiative-674*. The Commission has assigned each comment a number appearing after the name of the commenter and the date of submission. This notice cites comments using the last name of the individual submitter or the name of the organization, followed by the number assigned by the Commission.

[16] *See, e.g.,* Mortgage Bankers Association (Comment #39); National Automobile Dealers Association (Comment #40); Data & Marketing Association (Comment #38); Electronic Transactions Association (Comment #24); State Privacy & Security Coalition (Comment #26).

[17] *See, e.g.,* American Financial Services Association (Comment #42); Securities Industry and Financial Markets Association (Comment #25); State Privacy & Security Coalition (Comment #26); EDUCAUSE (Comment #17); Mortgage Bankers Association (Comment #39).

[18] National Automobile Dealers Association (Comment #40).

[19] *See, e.g.,* American Financial Services Association (Comment #42); Securities Industry and Financial Markets Association (Comment #25); State Privacy & Security Coalition (Comment #26); EDUCAUSE (Comment #17); Mortgage Bankers Association (Comment #39).

[20] *See, e.g.,* Data & Marketing Association (Comment #38); Electronic Transactions Association (Comment #24).

[21] *See e.g.,* Software & Information Industry Association (Comment #23); Electronic Transactions Association (Comment #24).

effectively promote information security.[22]

On the other hand, some commenters recommended that the FTC strengthen the Rule by including more detailed security requirements.[23] The Clearing House Association LLC (''The Clearing House''), a banking association and payments company that is owned by the largest commercial banks, argued that the Rule's requirements, at least with respect to large financial technology (''Fintech'') companies, should be more akin to the rules applicable to banks under the Federal Financial Institutions Examination Council (''FFIEC'') Interagency Guidelines. Among other things, these guidelines specify elements that financial institutions should include in a risk assessment; areas a financial institution must consider—such as access controls, encryption, and incident response—in developing security controls; and provisions that financial institutions must include in contracts with service providers. The Electronic Privacy Information Center (''EPIC'') recommended that certain practices set forth in the FTC's Safeguards Rule Guidance, such as employee background checks, authentication requirements, and encryption, should be mandatory.[24]

Having considered these comments, the Commission proposes to amend the Rule to include more specific security requirements. While the Commission agrees with those commenters that argued that the flexibility of the current Safeguards Rule is a strength that allows the Rule to adapt to changing technology and threats, the Commission believes that more specific requirements will benefit financial institutions by providing them more guidance and certainty in developing their information security programs, while largely preserving that flexibility. The Commission agrees that a checklist approach is not appropriate, which is why the proposed amendments retain the existing Rule's process-based approach, allowing companies to tailor their programs to their size and to the sensitivity and amount of customer information they collect. As to the commenters that stated that the current Rule works well and that companies have already developed compliance programs under it, the Commission does not believe the proposed new requirements would require an overhaul of existing compliance programs. Because the new requirements build on existing requirements, they will help companies benchmark and improve their current compliance programs, rather than having to start from scratch. Finally, the Commission recognizes that some of the financial institutions to which the Safeguards Rule applies—such as tax preparers or mortgage brokers—may be very small businesses with few customers. Accordingly, the proposed amendment would exempt smaller financial institutions from certain requirements of the amended Rule.

The Commission also agrees that very specific requirements for information security programs could become outdated and require frequent amendments. Accordingly, the proposed amendments provide more detailed requirements as to the issues and threats that must be addressed by the information security program, but do not require specific solutions to those problems. Instead, the proposed amendments retain the process-based approach of the Rule, while providing a more detailed map of what information security plans must address. As discussed in detail below, information security programs under the proposed amendments would still be based on risk assessments performed by the covered financial institutions and would be developed to address the specific risks and needs of the financial institution. The Commission continues to believe that a flexible, non-prescriptive Rule enables covered organizations to use it to respond to the changing landscape of security threats, to allow for innovation in security practices, and to accommodate technological changes and advances. The proposed amendments are designed to preserve that flexibility while doing more to ensure that financial institutions develop information security plans that are appropriate, reasonable, and designed to protect customer information.[25] Although the Commission believes the proposed approach is sufficiently flexible, it seeks comment on whether the approach creates unintended consequences for businesses, may be more stringent than necessary to achieve the objective, and/or unnecessarily modifies language without creating a material benefit to security.

2. Whether the Rule Should Require the Inclusion of an Incident Response Plan

The Commission sought comment on whether the Rule should require an incident response plan. Several commenters were opposed to adding such a requirement. Some of these commenters noted that states already require companies to notify consumers of a breach and that companies effectively must have some sort of incident response plan in place to meet this requirement, so there would be no need to add this requirement to the Rule.[26] Some commenters argued that such a requirement would be burdensome for many businesses.[27] Others stated that there is no need to add such a requirement because, for many financial institutions, in order to satisfy the Rule's current requirement to have a reasonable information security program, a financial institution would necessarily be required to have an incident response plan.[28] On the other hand, The Clearing House noted that an incident response program is ''a crucial element of data security hygiene in the increasingly dangerous threat environment'' and urged that the Commission impose this requirement on FTC-regulated financial institutions, especially since this is already a requirement for banks under the FFIEC Interagency Guidelines.[29]

The Commission agrees that the current Rule already requires many financial institutions to develop an incident response plan as part of their information security program. However, the Commission believes there is value to making such a requirement explicit. Accordingly, the Commission proposes an amendment to the Rule to require covered financial institutions to develop an incident response plan as part of their information security program, as described in greater detail below. The

[22] Data & Marketing Association (Comment #38); Electronic Transactions Association (Comment #24); State Privacy & Security Coalition (Comment #26).

[23] The Clearing House Association LLC (Comment #35); Electronic Privacy Information Center (Comment #30).

[24] Electronic Privacy Information Center (Comment #30), *citing Financial Institutions and Customer Information: Complying with the Safeguards Rule,* FED. TRADE COMM'N (Apr. 2006), *https://www.ftc.gov/tips-advice/business-center/guidance/financial-institutions-customer-information-complying* [hereinafter ''Safeguards Rule Guidance'']. EPIC also urged the Commission to apply the Rule to all types of businesses, not just financial institutions, but the GLBA provides statutory authority only for requirements applicable to financial institutions.

[25] The Commission agrees with the Electronic Transactions Association (Comment #24) about the importance of self-regulation in this area and continues to work with industry groups to promote industry-specific guidance and training on security.

[26] *See, e.g.,* Securities Industry and Financial Markets Association (Comment #25); National Automobile Dealers Association (Comment #40).

[27] *See, e.g.,* National Automobile Dealers Association (Comment #40); Securities Industry and Financial Markets Association (Comment #25);

[28] *See, e.g.,* Consumer Data Industry Association (Comment #36); EDUCAUSE (Comment #17); MasterCard Worldwide (Comment #14).

[29] The Clearing House (Comment #35).

Commission does not agree that a process-based requirement that financial institutions plan for an incident encourages a ''check the box'' approach. Nor does the Commission agree that such an obligation is generally burdensome, particularly for businesses operating nationwide, given that many institutions already must develop a response plan to comply with state law.[30]

The proposed amendment lists several general areas that the plan would need to address, as discussed in greater detail below. The Commission seeks comment about the potential costs and benefits of this proposal. In particular, the Commission is interested in any data, research or case studies that the Commission could use to analyze what commenters advocate. The proposed amendment is designed to ensure that covered financial institutions are prepared in the event of a cybersecurity event, while still giving them ample flexibility to adapt the plan to the needs and resources of their business.

3. Whether the Safeguards Rule should reference or incorporate any other information security standards or framework, such as the National Institute of Standards and Technology's Cybersecurity Framework or the Payment Card Industry Data Security Standard

The Commission sought comment on whether the Rule should reference or incorporate any other information security standards or frameworks, such as the National Institute of Standards and Technology's (''NIST'') Cybersecurity Framework (the ''Framework'') or the Payment Card Industry Data Security Standard (''PCIDSS'').

The majority of commenters advocated against referring to or incorporating any other information security standard or framework, such as the NIST Framework or PCIDSS, into the Rule.[31] Some commenters argued that the FTC should not adopt the NIST Framework as a binding set of obligations because it would lead to a ''check the box'' security mandate, and would add a layer of complexity to an already complex regulatory environment where institutions have to comply with numerous preexisting federal and state requirements.[32] The Electronic Transactions Association (''ETA'') argued that the Framework is ''not designed to replace an organization's cybersecurity risk management'' and that it is not intended to be a standard or checklist.[33]

A few commenters wrote in support of incorporating a reference to the NIST Framework in the Rule, while not requiring compliance with the Framework.[34] For example, the Financial Services Roundtable/BITS (''FSR/BITS'') argued that incorporating the NIST Framework in the Rule as an informative reference would help to address ''the growing thicket of cybersecurity compliance obligations that are spreading across the financial services sector.'' [35] FSR/BITS recommended further that the Commission modify the Rule so that financial institutions that use the NIST Framework would be found in *de facto* compliance with the Rule.[36]

With respect to the PCIDSS, numerous commenters opposed the Rule's reference or incorporation of PCIDSS.[37] Commenters argued such an amendment has the possibility of undermining the Rule's flexibility by imposing a ''one-size-fits-all'' approach.[38] MasterCard Worldwide, a co-founder and developer of PCIDSS, opposed this amendment to the Rule, highlighting that the PCIDSS was created by major card networks for participants in the card industry.[39] Whereas the PCIDSS may be appropriate for payment card issuers and acquirers, MasterCard argued, it would not necessarily apply well to other financial institutions.[40] Other comments agreed that incorporating PCIDSS would be inappropriate.[41] No commenters wrote in support of referencing or incorporating the PCIDSS into the Rule. Having considered these comments, the Commission declines to propose changing the Rule to incorporate or reference a particular security standard or framework. As noted above, for a variety of reasons, including questions about the applicability of the particular standards at issue to all financial institutions, the majority of commenters opposed referencing or incorporating any specific information security standard or framework into the Rule. Mandating that companies follow a particular security standard or framework would reduce the flexibility built into the current Rule. This proposal does not amend the Rule to allow compliance with such standards to serve as a safe harbor against Commission enforcement, as some commenters sought. The Commission seeks additional comment on how such a program could remain up to date and respond rapidly to changes in the security environment, and the workability of monitoring changing standards and adapting a safe harbor rule as needed.

4. Whether the Safeguards Rule Should Contain its own Definition of ''Financial Institution'' Rather Than Cross-Reference the Definition set Forth in the Privacy Rule

The Commission also asked whether the Rule should be revised to incorporate a definition of ''financial institution'' and related examples in the Rule itself, rather than cross-reference reference definitions and examples set forth in the Privacy Rule.[42]

The term ''financial institution'' is defined in the Privacy Rule, and that term is cross-referenced in the Safeguards Rule.[43] Under the Dodd-Frank Act,[44] the majority of the Commission's rulemaking authority for the Privacy Rule was transferred to the Consumer Financial Protection Bureau, with the exception of rulemaking authority pertaining to certain motor vehicle dealers.[45] Accordingly, the Commission's Privacy Rule now applies only to certain motor vehicle dealers. The Safeguards Rule, however, still applies to all financial institutions within the FTC's general enforcement jurisdiction.[46] Thus, currently, the

[30] *See e.g.,* n.26.

[31] *See, e.g.,* U.S. Chamber of Commerce, Center for Capital Markets Competitiveness (Comment #22); Retail Industry Leaders Association (Comment #18); Electronic Transactions Association (Comment #24); EDUCAUSE (Comment #17).

[32] EDUCAUSE (Comment #17).

[33] Electronic Transactions Association (Comment #24).

[34] *See, e.g.,* Financial Services Roundtable/BITS (Comment #21); Software & Information Industry Association (Comment #23).

[35] Financial Services Roundtable/BITS (Comment #21).

[36] *Id.*

[37] *See, e.g.,* Electronic Transactions Association (Comment #24); MasterCard Worldwide (Comment #14); Retail Industry Leaders Association (Comment #18).

[38] Electronic Transactions Association (Comment #24); EDUCAUSE (Comment #17).

[39] MasterCard Worldwide (Comment #14).

[40] *Id.*

[41] *See* Securities Industry and Financial Markets Association (Comment #25) (arguing that there is insufficient overlap between payment card industry and covered financial institutions to justify adopting PCIDSS); Retail Industry Leaders Association (Comment #18) (arguing that adopting PCIDSS would not be an effective basis for a regulation); National Retail Federation (Comment #29) (noting that PCIDSS is a proprietary information security standard controlled by a single industry); State Privacy & Security Coalition (Comment #26) (arguing that adopting PCIDSS would amount to outsourcing federal rulemaking authority).

[42] Privacy of Consumer Financial Information Rule (''Privacy Rule''), 16 CFR part 313.

[43] 16 CFR 313.3(k); 16 CFR 314.2(a).

[44] Public Law 111–203, 124 Stat. 1376 (2010).

[45] 15 U.S.C. 6804(a)(1)(C).

[46] 15 U.S.C. 6804(a)(1)(A).

definition of ''financial institution'' in the Privacy Rule—which governs the scope of the Safeguards Rule—applies to all financial institutions within the Commission's jurisdiction, despite the fact that most types of financial institutions are no longer subject to the Privacy Rule. This creates a confusing situation where the Privacy Rule, on its face, appears to cover types of ''financial institutions'' that the Privacy Rule no longer covers.

To address this issue, the Commission proposes incorporating the definition of ''financial institution'' and the accompanying examples from the Privacy Rule into the Safeguards Rule.[47] None of the commenters voiced a view one way or the other on this issue. The Commission notes that this modification would have no substantive effect on the scope of the Rule or its enforcement.[48] This change will only increase the clarity of the Rule.

5. Whether, if the Safeguards Rule is Amended To Include its own Definition of ''Financial Institution,'' That Definition Should be Expanded to Also Include (1) Entities That are Significantly Engaged in Activities That the Federal Reserve Board has Found To Be Incidental to Financial Activities and/or (2) Activities That Have Been Found To Be Closely Related to Banking or Incidental to Financial Activities by Regulation or Order in Effect After the Enactment of the GLBA

Finally, the Commission asked about the scope of the definition of ''financial institution.'' When promulgating the Privacy Rule in 2000, the Commission determined that companies engaged in activities that are ''incidental to financial activities'' would not be considered ''financial institutions.''[49] The Commission was the only agency to adopt this restrictive definition in its Privacy Rule, while the other agencies included incidental activities.[50] In addition, the Commission decided that activities that were determined to be financial in nature after the enactment of the GLBA would not be automatically included in its Privacy Rule; rather, the Commission would have to take additional action to include them.[51] The effect of these two decisions was to limit the activities covered by the Commission's rules to those set out in 12 CFR 225.28 as it existed in 2000, and to exclude any activities later determined by the Federal Reserve Board to be financial activities or incidental to those activities.[52] The definition from the Privacy Rule was incorporated into the Safeguards Rule.[53] Thus, in the Request for Comment,[54] the Commission sought comment on whether it should more closely align with other agencies and amend the Safeguards Rule to include ''incidental'' activities and activities determined to be financial or incidental after 1999.

In 2000, the Federal Reserve Board determined that acting as a ''finder'' is an activity that is ''incidental to a financial activity.''[55] The Federal Reserve Board defined ''finding'' as bringing together buyers and sellers of products or services for transactions that the buyers and sellers themselves negotiate and consummate.

The majority of commenters who addressed the definition of ''financial institutions'' urged the Commission not to amend the definition to include more than those businesses that conduct traditional financial activities or to include activities determined to be financial in nature or incidental after the enactment of the GLBA.[56] For example, the Software & Information Industry Association (''SIIA'') commented that the Rule already has an impact beyond financial institutions themselves in encouraging entities that receive customer information from financial institutions to take measures to secure that data, even though they may not be legally obligated to do so under the Rule.[57] Per SIIA, this is because they are either contractually bound by partnerships with financial institutions, or compete for business on the ability to meet high security requirements.[58] The Securities Industry and Financial Markets Association (''SIFMA'') also opposed this amendment, claiming that the securities industry makes a proactive, regular effort to familiarize itself with other regulatory frameworks' definitions in order to satisfy the Rule's ''reasonable'' standard.[59] Thus, the Rule already implicitly requires their industry, SIFMA argues, ''to understand the Privacy Act, Federal Reserve Board guidance, and the [GLBA's] impact. Creating new, or modifying existing, definitions in the Rule would eliminate the Rule's flexibility in this regard.''[60]

In opposition to an expansion of the definition of financial institutions that might include incidental participants in financial transactions, the National Association of Convenience Stores (''NACS'') noted that some incidental participants—such as its members—do not store customer-identifying information, nor do they have continuing information-based relationships with consumers that would justify development and maintenance of a comprehensive security program.[61] Further, according to NACS, its members do not handle some of the most sensitive personal information such as Social Security numbers and driver's license numbers that are more commonly associated with identity theft.[62] Financial institutions, by contrast, do handle such sensitive personal consumer information.[63]

On the other hand, EPIC advocated that the Commission expand the scope of the Rule to include ''all organizations and companies that collect consumer data,'' such as educational institutions and commercial businesses that process student and consumer information.[64] In underscoring the importance of doing so, EPIC noted that such organizations frequently collect the same sensitive information as traditional financial institutions and are subject to the same security threats.[65]

Having considered these comments, the Commission proposes amending the definition of ''financial institution'' to include ''incidental'' activities and activities determined to be financial or incidental after 1999. This change would bring ''finders'' within the scope of the Rule. The Commission recognizes that commenters generally opposed revising the definition, but notes that commenters' concerns generally related

[47] The Commission is releasing a NPRM that proposes parallel revisions to the Privacy Rule concurrently with this NRPM.

[48] Separately, as noted below, the Commission proposes to revise the definition of ''financial institution'' to cover finders.

[49] *See* 16 CFR 313.3(k); *see also* 65 FR 33646, 33654 (May 24, 2000).

[50] The Commission also added the requirement that an entity must be ''significantly engaged'' in the financial activity to be considered a financial institution under the Privacy Rule. 16 CFR 313.3(k). The Commission is not proposing to change this requirement.

[51] 65 FR 33646, 33654 n.23 (May 24, 2000).

[52] *Id.*

[53] 16 CFR 314.2(a).

[54] 81 FR 61632 (Sept. 7, 2016).

[55] *See* 65 FR 80735 (Dec. 22, 2000); 12 CFR 225.86(d)(1).

[56] *See, e.g.,* National Association of Convenience Stores (Comment #28); Software & Information Industry Association (Comment #23); Securities Industry and Financial Markets Association (Comment #25).

[57] Software & Information Industry Association (Comment #23). *But see* National Automobile Dealers Association (Comment #40) (supporting more specific requirements for service providers' security).

[58] Software & Information Industry Association (Comment #23).

[59] Securities Industry and Financial Markets Association (Comment #25).

[60] *Id.*

[61] National Association of Convenience Stores (Comment #28).

[62] *Id.*

[63] *Id.*

[64] Electronic Privacy Information Center (Comment #30).

[65] *Id.*

to issues not presented by the proposed change *(e.g.,* bringing such entities as convenience stores or securities firms within the Rule's ambit).

The Commission is not proposing such a broad expansion, however. The only effect of this proposed amendment would be to cause finders, whose activities often involve collection of financially sensitive personal information, to be covered by the Rule. This modification would ensure that finders adequately protect that information. Because they collect, maintain, and store sensitive consumer information, it is important for them to be subject to requirements to safeguard it. If this sensitive information were to get into the wrong hands, consumers could suffer identity theft, fraud, and other harms.

The Commission's proposed change would not bring any other activities under the coverage of the Rule because the Federal Reserve Board has not determined any activity other than finding to be financial in nature, or incidental to such activity, since the enactment of the GLBA. Further, it would harmonize the Commission's Rule with other regulators' Safeguards Rules—which already cover institutions engaged in activities incidental to financial activities—as well as Regulation P, which applies to all other financial institutions that are not covered by the Privacy Rule.[66] This harmonization will create a more consistent regulatory landscape that will help to treat businesses the same regardless of which agency is regulating them. Accordingly, the Commission's proposed amendment to section 314.1(b) indicates that the Rule's scope includes companies that engage in activities that are financial in nature or incidental to such financial activities. Likewise, the proposed definition of ''financial institution'' in proposed section 314.2(e)(1) also includes companies engaged in activities that are incidental to financial activities.

In connection with this proposal, the Commission requests comment on the impact of expanding the definition of ''financial institutions'' to include finders. Specifically, the Commission seeks information on 1. The number of finders in the marketplace that would be included in this definition; and 2. the costs and benefits, including the costs and benefits to finders and consumers, of this proposal.

[66] As noted above, however, unlike other agencies' equivalent rules, the FTC Safeguards Rule limits financial institutions to those ''significantly engaged'' in the financial activity. The Commission is proposing to retain this limitation and extend it to activity incidental to financial activity.

III. Section-by-Section Analysis

As discussed above, the Commission proposes to amend the Safeguards Rule to include more detailed requirements for the development and establishment of the information security program required under the Rule. These amendments are based primarily on the cybersecurity regulations issued by the New York Department of Financial Services, 23 NYCRR 500 (''Cybersecurity Regulations''), and the insurance data security model law issued by the National Association of Insurance Commissioners (''Model Law'').[67] The Cybersecurity Regulations were issued in February 2017 after two rounds of public comment. The Model Law was issued in October 2017. The Commission believes that both the Cybersecurity Regulations and the Model Law maintain the balance between providing detailed guidance and avoiding overly prescriptive requirements for information security programs. The proposed amendments do not adopt either law wholesale, instead taking portions from each and adapting others for the purposes of the Safeguards Rule.[68]

The Commission is interested in receiving data, research, case studies, or other evidence related to business efforts to comply with the Cybersecurity Regulations or state laws mirroring the Model Law. The Commission is also interested in receiving comments on the extent to which the proposal would preempt existing state laws. Section 507(a) of the GLBA, 15 U.S.C. 6807(a), preserves a state ''statute, regulation, order, or interpretation'' that is not ''inconsistent'' with the privacy and security provisions of the GLBA. The Commission is interested in hearing about the effect of the proposal on companies' compliance with state and federal law. Finally, in light of the proposed amendments and the existence of several cybersecurity frameworks that require processes similar to the Proposed Rule, the Commission additionally requests comments on the potential for safe harbors against Commission enforcement of the Safeguards Rule, including evidence on the efficacy and utility of safe harbors in other contexts and perspectives on the viability of a safe harbor in the present context, especially as safe harbors relate to small business.

[67] National Association of Insurance Commissioners, Insurance Data Security Model Law (2017), *www.naic.org/store/free/MDL-668.pdf*. South Carolina has enacted legislation based on the Model Law. 2017 S.C. Act No. 171, R. 184, H 4655.

[68] At the time the Commission issued its request for comments, neither the Cybersecurity Regulations nor the Model Law had been implemented, so the Commission did not seek comment on the more detailed approaches they adopted. The Commission is doing so through this NPRM.

In addition to the amendments related to the requirements for information security programs, the Commission proposes amendments to the definition of ''financial institution'' and the addition of examples previously contained in the Privacy Rule, as discussed above. It also adds to the definition of ''financial institution'' entities that engage in activities incidental to financial activities. The following is a section-by-section analysis of the proposed amendments. The Commission seeks comments on the proposed amendments in general but also seeks comment on specific questions as set forth in the analysis below.

Proposed Amendments to Section 314.1: Purpose and Scope

The proposed amendment would add language from section 313.1(b) of the Privacy Rule, relating to the scope of the Rule and definition of financial institution, to section 314.1(b) of the Safeguards Rule. This addition would set forth the scope of the Safeguards Rule, which previously applied to the same entities as the Privacy Rule until the Dodd-Frank Act limited the scope of the Privacy Rule only to certain automobile dealers. As noted above, the Commission is proposing in a concurrent NPRM to amend the Privacy Rule to reflect the narrower scope of that regulation[69] and, in turn, proposes to amend the Safeguards Rule to clarify that it retains its original scope. Section 314.1(b) states that the Safeguards Rule applies to the handling of customer information by all financial institutions over which the Commission has jurisdiction. The proposed amendment sets forth the general definition of ''financial institution'' and provides examples of financial institutions under the Commission's jurisdiction, such as finance companies and mortgage brokers. The added language is taken largely from the existing Privacy Rule. The new language is not meant to change the scope of the Safeguards Rule, other than to reflect the proposed addition of ''finders'' to the Rule's scope, as discussed below.

[69] A notice of proposed rulemaking relating to the Privacy Rule is published elsewhere in this issue of the **Federal Register**.

Proposed Amendment to Section 314.2: Definitions

The proposed amendments to section 314.2 add definitions to terms introduced in the proposed amended Rule. The proposed amendments do not alter or remove any definitions in the existing Rule. Existing definitions are interspersed with new definitions in alphabetical order. The Commission is interested in hearing whether these updated definitions reflect current practices, or whether they need to be adjusted to avoid unintended consequences, modified or eliminated for smaller firms, or narrowed to avoid undue burden. Proposed paragraph (a), which states that terms used in the Safeguards Rule have the same meaning as set forth in the Privacy Rule, would be unchanged from the existing Rule. This provision will apply to terms defined in the Privacy Rule but not in the Safeguards Rule, such as ''customer'' and ''nonpublic personal information.''

Proposed paragraph (b) would define an ''authorized user'' of an information system as any employee, contractor, agent or other person that participates in the business operations of an entity and is authorized to access and use any of that financial institution's information systems and data.[70] This term is used in proposed section 314.4(c)(10), which requires financial institutions to implement policies to monitor the activity of authorized users and detect unauthorized access to customer information.

Proposed paragraph (c) would define a ''security event'' as ''an event resulting in unauthorized access to, or disruption or misuse of, an information system or information stored on such information system.''[71] This term is used in proposed provisions requiring financial institutions to establish written incident response plans designed to respond to security events and to implement audit trails to detect and respond to security events. It also appears in a proposed provision requiring a financial institution's chief information security officer to provide an annual report to the financial institution's governing body, which must identify all security events that took place that year.

Proposed paragraph (d) is the existing Rule's paragraph (b) and would not alter the definition of ''customer information.''

Proposed paragraph (e) would define ''encryption'' as ''the transformation of data into a form that results in a low probability of assigning meaning without the use of a protective process or key.'' This term is used in proposed section 314.4(c)(4), which generally requires financial institutions to encrypt customer information, with certain exceptions. This definition is adopted from the Model Law[72] and is intended to define the process of encryption while not requiring any particular technology or technique for achieving the protection provided by encryption. The Commission seeks comment on this definition.

As discussed above, proposed paragraph (f) would incorporate the definition of ''financial institution'' from the Privacy Rule. The Commission is proposing one substantive change to the definition of ''financial institution'' to include entities that are ''significantly engaged in activities that are incidental'' to financial activities as defined by the Bank Holding Company Act. As discussed above, this change would bring only one activity into the definition that was not covered before: The act of ''finding,'' as defined in 12 CFR 225.86(d)(1). The proposed revision to paragraph (f) would add an example of a financial institution acting as a finder by ''bringing together one or more buyers and sellers of any product or service for transactions that the parties themselves negotiate and consummate.'' This example uses the language set forth in 12 CFR 225.86(d)(1), which defines finding as an activity that is incidental to a financial activity under the Bank Holding Company Act.

Proposed paragraph (g) is the existing Rule's paragraph (c) and would not alter the definition of ''information security program.''

Proposed paragraph (h) would define ''information system'' as ''a discrete set of electronic information resources organized for the collection, processing, maintenance, use, sharing, dissemination or disposition of electronic information, as well as any specialized system such as industrial/process controls systems, telephone switching and private branch exchange systems, and environmental control systems.''[73] The term ''information system'' is used throughout the proposed amendments to designate the systems that must be covered by the information security program. This definition is designed to cover the systems, including hardware, software, and networks that financial institutions use to maintain, process, access and store customer information. It is meant to be a broad definition that covers any system that, if compromised, could result in unauthorized access to customer information.

Proposed paragraph (i) would define ''multi-factor authentication'' as ''authentication through verification of at least two of the following types of authentication factors: 1. Knowledge factors, such as a password; 2. possession factors, such as a token; or 3. inherence factors, such as biometric characteristics.'' This term is used in proposed section 314.4(c)(6), which requires financial institutions to implement multi-factor authentication for individuals accessing internal networks that contain customer information. This definition comes from the Cybersecurity Regulations[74] and is designed to conform to current understanding of what constitutes multi-factor authentication while still allowing financial institutions considerable flexibility in designing systems to protect their networks.[75] Under this definition, a system of multi-factor authentication would need to verify at least two of the three types of factors, but has considerable flexibility in how to implement each factor. For example, under the knowledge factor, financial institutions are not limited to requiring passwords for access to systems, but might also use biographical information, or other knowledge that should be limited to the authorized user. The possession factor, could

[70] This definition is substantively identical to the definition found in 23 NYCRR 500.01(b).

[71] This definition is based on the definition found in the Model Law, Section 3(D). The proposed amendment adopts the term ''security event'' in place of the Model Law's term ''cybersecurity event'' to clarify that an information security program encompasses information in both digital and paper form and that unauthorized access to paper files would also be a security event under the Rule. For this reason, throughout the proposed amendment, the Commission has proposed to replace the term ''cybersecurity'' from the Cybersecurity Regulations and Model Law with either ''information security'' or simply ''security.'' In addition, the proposed definition does not include the Model Law's exemption for the acquisition of encrypted information or events where the covered entity determines that the information accessed by an unauthorized person has not been used or released and has been returned or destroyed. In both instances, the Commission believes that a financial institution should still engage in its incident response procedures to address the failures in its information security that allowed such events to occur.

[72] Model Law, Section 3(F).

[73] This definition is identical to the definition in 23 NYCRR 500.1(e).

[74] 23 NYCRR 500.01(f). The proposed amendment deviates from the language of the Cybersecurity Regulations in that it does not include text messages as an example of a possession factor. As NIST has noted, SMS text messages are vulnerable to compromise and may not be an appropriate means of verifying identity. *See, e.g.,* NIST Special Publication 800–63B, Digital Identity Guidelines, 5.1.3.3 (restricting use of verification using the Public Switched Telephone Network (SMS or voice) as an ''out-of-band'' factor for multifactor authentication).

[75] *See* NIST, Glossary, ''Multifactor Authentication,'' *https://csrc.nist.gov/glossary/term/Multi_Factor_Authentication.*

include verifying that a recognized device is accessing the system, or the transmission of a one-time code to a device on file with the financial institution. For the inherence factors, fingerprints, retina scans, or voice prints can be used. The Commission seeks comment on whether this definition is sufficiently flexible, while still requiring the elements of meaningful multi-factor authentication.

Proposed paragraph (j) would define ''penetration testing'' as a ''test methodology in which assessors attempt to circumvent or defeat the security features of an information system by attempting penetration of databases or controls from outside or inside your information systems.'' [76] This term is used in proposed section 314.4(d)(2), which requires financial institutions to continually monitor the effectiveness of their safeguards or to engage in annual penetration testing. The primary example of penetration testing is where a security expert uses common techniques in an attempt to breach the security of a financial institution's information system. As set forth in the proposed definition, this includes attempts where the penetration tester is acting as an outsider who must penetrate the system without any initial access to the system, and attempts where the tester acts as someone with limited access to the system—such as a contractor or employee—and tries to access information that such an insider is not authorized to access. The Commission believes that there is currently a commonly understood definition of these services and that this definition provides sufficient guidance to understand the requirements of the proposed amendments.

Proposed paragraph (k) is the existing Rule's paragraph (d) and would not alter the definition of ''service provider.''

Proposed Amendment to Section 314.3: Standards for Safeguarding Customer Information

Current section 314.3 requires financial institutions to develop an information security program (subsection (a)) and sets forth the objectives of the Rule (subsection (b)). Proposed section 314.3 retains the current requirements of section 314.3 under subsection (a) and the existing statement of objectives under subsection (b). It would, however, change the requirement that ''safeguards'' be based on the elements set forth in section 314.4, by replacing ''safeguards'' with ''information security program.'' This change is proposed to clarify that the elements set forth in section 314.4 are parts of the information security plan.

Proposed Amendments to Section 314.4: Elements

The proposed amendments to section 314.4 would alter existing required elements of an information security program and adds several new elements. Although the Commission believes the proposed approach is sufficiently flexible, it seeks comment on whether it creates unintended consequences for businesses, may be more stringent than necessary to achieve the objective, and/or unnecessarily modifies the current rule without creating a material benefit to security.

Proposed Paragraph (a)

Amended paragraph (a) would expand the current requirement of designating an ''employee or employees to coordinate your information security program'' by requiring the designation of a single qualified individual responsible for overseeing and implementing the financial institution's security program and enforcing its information security program.[77] This individual is referenced in the Rule as a Chief Information Security Officer or ''CISO.'' This title is for clarity in the proposed Rule; financial institutions would not be required to actually grant that title to the designated individual. The proposed amendment would no longer allow financial institutions to designate more than one employee to coordinate the information security program. The Commission is interested in hearing about the potential costs and benefits of this proposal. In particular, the Commission is interested in any data, research or case studies that the Commission could use to analyze whether this is the best approach. This proposed change is intended to ensure that a single individual is accountable for overseeing the entire information security program and to lessen the possibility that there will be gaps in responsibility between individuals. The Commission believes that requiring a single responsible individual will increase accountability for the security of financial institutions' information systems.

Under the proposed amendment, the CISO need not be an employee of the financial institution, but can be an employee of an affiliate or a service provider. This proposed change is meant to accommodate financial institutions that may prefer to retain an outside expert, lack the resources to employ their own information security staff qualified to oversee a program, or decide to pool resources with affiliates to share staff to manage information security. To the extent a financial institution meets this requirement by using a service provider or affiliate, however, the proposed amendment would require that the financial institution still: 1. Retain responsibility for compliance with the Rule; 2. designate a senior member of its personnel to be responsible for direction and oversight of the CISO; and 3. require the service provider or affiliate to maintain an information security program that protects the financial institution in accordance with the Rule. These proposed amendments are designed to ensure that, even when the financial institution outsources the CISO function, the financial institution retains responsibility for its own information security.

Proposed Paragraph (b)

The proposed amendments to paragraph (b) clarify that a financial institution must base its information security program on the findings of its risk assessment by changing the first sentence of existing paragraph (b) to read that financial institutions' ''information security program shall be based on a risk assessment. . . .'' [78] This is intended to emphasize this requirement, which is already required under the existing Rule.[79] In addition, the proposed amendment removes existing section 314.4(b)'s requirement that the risk assessment must include consideration of specific risks [80] because these specific risks are set forth elsewhere in the proposed amendments.[81]

Proposed section 314.4(b)(1) would require that the risk assessments be written and based on criteria for evaluating the risks the institutions face based on their particular information systems and the customer information they hold.[82] In addition, revised paragraph (b)(1) would require that the risk assessment describe how the financial institution will mitigate or

[76] This definition is substantively identical to the definition found in 23 NYCRR 500.01(h).

[77] Proposed 16 CFR 314.4(a). This amendment is based on 23 NYCRR 500.04(a) and is functionally identical.

[78] Proposed 16 CFR 314.4(b).

[79] 16 CFR 314.4(b).

[80] 16 CFR 314.4(b)(1), (b)(2), and (b)(3).

[81] *See, e.g.,* Proposed 16 CFR 314.4(c)(2), (c)(10), and (e).

[82] Proposed 16 CFR 314.4(b)(1). This proposed amendment is based on 23 NYCRR 500.09(b). Proposed 16 CFR 314.4(b)(1) retains the requirement from the Cybersecurity Regulations that the risk assessment be written, but deviates from the Cybersecurity Regulations in that it does not require that the criteria for the risk assessment be written.

accept any identified risks and how the financial institution's information security program will address those risks.[83] The Commission is proposing these requirements in order to encourage financial institutions to perform thorough and complete risk assessments. The proposed amendment would allow financial institutions to develop their own criteria suited to their needs, but generally the criteria should address the sensitivity and value of customer information collected, maintained or transmitted by the financial institution and possible vectors through which the security, confidentiality, and integrity of that information could be threatened.

The proposed amendment to section 314.4(b) would also add a requirement that financial institutions ''periodically perform additional risk assessments that reexamine the reasonably foreseeable internal and external risks to the security, confidentiality, and integrity of customer information that could result in the unauthorized disclosure, misuse, alteration, destruction or other compromise of such information, and reassess the sufficiency of any safeguards in place to control these risks.'' [84] The Commission believes that in order to be effective, a risk assessment must be subject to periodic reevaluation to adapt to changes in both financial institutions' information systems and changes in threats to the security of those systems. The proposed amendment would not set forth a prescriptive schedule for the periodic risk assessment, but would require financial institutions to set their own schedule based on the needs and resources of their institution.

Proposed Paragraph (c)

Proposed paragraph (c) retains the existing Rule's requirement for financial institutions to design and implement safeguards to control the risks identified in the risk assessment. It also adds more detailed requirements for what these safeguards must include. The Commission believes that most financial institutions already implement such measures as part of their comprehensive information security programs under the existing Rule. The proposed amendment simply makes these requirements explicit in order to clarify the Rule and ensure that financial institutions understand their obligations under the Rule.

Amended paragraph (c)(1) would require financial institutions to place access controls on information systems, designed to authenticate users and permit access only to authorized individuals in order to protect customer information from unauthorized acquisition.[85] The Commission views this as a fundamental requirement of all information security programs,[86] which certainly would have been a part of any program that met the requirements of the existing Rule.

Proposed paragraph (c)(2) would require financial institutions to ''[i]dentify and manage the data, personnel, devices, systems, and facilities that enable [the financial institution] to achieve business purposes in accordance with their relative importance to business objectives and [the financial institution's] risk strategy.'' [87] This requirement is designed to ensure that the financial institution inventories the data in its possession, inventories the systems on which that data is collected, stored or transmitted, and has a full understanding of the relevant portions of its information systems and their relative importance.[88] For example, it would require a company to understand which devices and networks contain customer information, who has access to them, and how those systems are connected to each other and to external networks.

Proposed paragraph (c)(3) would require that financial institutions restrict access to physical locations containing customer information only to authorized individuals.[89] This element would require financial institutions to protect physical locations, as opposed to networks, that contain customer information and is designed to address the threat to physical copies of records.[90] This would require financial institutions to protect paper files and control access to areas in which such files are stored. This may include restricting access to work areas where personnel are using hard copies of customer information or requiring physical locks on filing cabinets containing customer information and similar protections. It would also include policies for securing physical devices that contain personal information, such as laptops, tablets, phones, and thumb drives.

Proposed paragraph (c)(4) would generally require financial institutions to encrypt all customer information, both in transit and at rest.[91] The Commission believes that in most circumstances encryption is an appropriate and important way to protect customer information from unauthorized use and access.[92] Recognizing that companies may need flexibility in certain unforeseen circumstances, the proposed amendment does, however, permit financial institutions to use alternative means to protect customer information, subject to review and approval by the CISO. This is similar to the approach taken by the Health Insurance Portability and Accountability Act Security Rule, which permits a covered entity to use an alternative to encryption if it determines that encryption is not reasonable and documents an equivalent alternative measure.[93] The Commission seeks comment on this approach.

Proposed paragraph (c)(5) would establish a requirement that financial institutions ''[a]dopt secure development practices for in-house developed applications utilized'' for ''transmitting, accessing, or storing customer information.'' [94] This proposed amendment is designed to ensure that financial institutions address the security of software they develop to handle customer information, as distinct from the security of their networks that contain

[83] Proposed 16 CFR 314.4(b)(1)(iii).

[84] Proposed 16 CFR 314.4(b)(2).

[85] Proposed 16 CFR 314.4(c)(1). This proposed amendment is based primarily on the Model Law, Section 4(D)(2)(a), though it adds the Cybersecurity Regulations' requirement that such controls be periodically reviewed. 23 NYCRR 500.07. The proposed amendments use the Model Law, as opposed to the Cybersecurity Regulations, where, as here, the format is more easily integrated into the current Rule.

[86] *See, e.g.,* Complaint, *Uber Technologies, Inc.,* No. 152 3054 (October 26, 2018) (alleging that company failed to implement reasonable access controls).

[87] Proposed 16 CFR 314.4(c)(2). This proposed amendment is based on the Model Law, Section 4(D)(2)(b), and is functionally identical to it.

[88] *See, e.g.,* Complaint, *FTC* v. *Wyndham Worldwide Corp.,* No. CV 12–1365–PHX–PGR (D. Ariz. August 8, 2012) (alleging that company failed to provide reasonable security by, among other things, failing to inventory computers connected to its network).

[89] Proposed 16 CFR 314.4(c)(3). This proposed amendment is based on Model Law, Section 4(D)(2)(c) and is functionally identical to it.

[90] *See, e.g.,* Complaint, *FTC* v. *LifeLock, Inc.,* No. 2:10-cv-00530–MHM (D. Ariz. March 9, 2010) (alleging that company failed to provide reasonable security where it received customers' personal information by facsimile in an open and easily accessible area).

[91] Proposed 16 CFR 314.4(c)(4). This proposed amendment is based on both 23 NYCRR 500.15 and Model Law Section 4(D)(2)(d). It takes the general format from the Model Law but integrates the requirement that any alternative measures must be approved by the CISO from the Cybersecurity Regulations.

[92] *See, e.g.,* Complaint, *Uber Technologies, Inc.,* FTC No. 152 3054 (October 26, 2018) (alleging that company failed to provide reasonable security when it stored sensitive personal information in plain text rather than encrypting it).

[93] *See* 45 CFR 164.306(d)(3); *id.* 164.312(a)(2)(iv) (making encryption an addressable specification).

[94] Proposed 16 CFR 314.4(c)(5).

customer information.[95] Financial institutions would be required to adopt practices designed to develop applications that do not subject customer information to unacceptable risk of unauthorized access. In addition, this amendment would require financial institutions to develop ''procedures for evaluating, assessing, or testing the security of externally developed applications [they] utilize to transmit, access, or store customer information.'' This proposed provision is designed to ensure that financial institutions take steps to verify that applications they use to handle customer information are secure.[96] Under this amendment, financial institutions would be required to take reasonable steps to assure themselves that applications they use to handle customer information are secure and will not expose customer information.

Amended paragraph (c)(6) would require financial institutions to ''implement multi-factor authentication for any individual accessing customer information'' or ''internal networks that contain customer information.'' [97] The Commission views multi-factor authentication as a minimum standard to allowing access to customer information for most financial institutions.[98] As discussed above, the Commission believes that the definition of multi-factor authentication is sufficiently flexible to allow most financial institutions to develop a system that is suited to their needs. Currently used forms of multifactor authentication, such as requiring both a password and the receipt of a one-time passcode on a registered device, would meet this proposed requirement. To the extent that a financial institution finds that a method other than multi-factor authentication offers reasonably equivalent or more secure access controls, the institution may adopt that method with the written permission of its CISO. The Commission seeks comment on this approach.

Amended paragraph (c)(7) would require information systems under the Rule to include audit trails designed to detect and respond to security events.[99] Audit trails are chronological logs that show who has accessed an information system and what activities the user engaged in during a given period.[100] The proposed Rule does not require any specific type of audit trail, nor does it require that every transaction be recorded in its entirety. However, the audit trail must be designed to allow the financial institution to detect when the system has been compromised or when an attempt to compromise has been made. It must also provide sufficient information for the financial institution to reasonably respond to the event. The proposed amendment does not require that the audit trails be retained for any particular period, but the Commission believes that in order to allow the financial institution to detect and respond to security events, the audit trails will usually have to be maintained for some reasonable length of time. Financial institutions would need to determine the appropriate retention period for their operations. The Commission seeks comment on whether this requirement needs to be modified or eliminated for smaller firms, or narrowed to avoid undue burden.

Amended paragraph (c)(8) would require financial institutions to develop procedures for the secure disposal of customer information in any format that is no longer necessary for their business operations or other legitimate business purposes.[101] The proposed amendment allows the retention of information when retaining the information is required by law or where targeted disposal is not feasible due to the manner in which the information is maintained, such as when the information is on paper records that cannot be destroyed without also destroying other information which is still necessary for business operations. The disposal of records, both physical and digital, can result in exposure of customer information if not performed properly.[102] Similarly, if records are retained when they are no longer necessary, there is a risk that those records will be subject to unauthorized access. This amendment would require financial institutions to reduce both of those risks by designing procedures to dispose of records that are no longer necessary and to do so securely and in a timely manner. The proposed amendment does not define ''legitimate business purposes,'' as the Commission feels that the wide array of business models of financial institutions under its jurisdiction defies any such attempt.

The Commission seeks comment on whether the Rule should define legitimate business purposes to exclude certain uses of customer information, require the destruction of certain types of data after a fixed period, or require financial institutions to affirmatively demonstrate a current need for customer information that is retained. The Commission also seeks comment on whether the proposed amendment should include a requirement to develop procedures to limit the collection of customer information that is not necessary for business operation or other legitimate business purposes.

Proposed paragraph (c)(9) would require financial institutions to adopt procedures for change management.[103] Change management procedures govern the addition, removal, or modification of elements of an information system.[104] Under the proposed amendment, financial institutions would need to develop procedures to assess the security of devices, networks, and other items to be added to their information system or the effect of removing such items or otherwise modifying the information system. For example, a financial institution that acquired a new subsidiary and wished to combine the new subsidiary's network with its own would be required to assess the security of the new network and the effect of adding it to the existing network. Although the Commission believes the proposed approach is sufficiently balanced, it seeks comment on whether the proposal may be more stringent than

[95] *See, e.g.,* Complaint, *FTC* v. *D-Link Systems, Inc.,* No. 3:17–CV–00039–JD (N.D. Cal. March 20, 2017) (alleging that company failed to provide reasonable security when it failed to adequately test the software on its devices).

[96] *See, e.g.,* Complaint, *Lenovo,* FTC No. 152–3134 (January 2, 2018) (alleging that company failed to provide reasonable security by failing to properly assess and address security risks caused by third-party software).

[97] Proposed 16 CFR 314.4(c)(6). This proposed amendment is based on 23 NYCRR 500.12, although it has been limited to requiring multifactor authentication only for accessing customer information.

[98] *See, e.g.,* Federal Financial Institutions Examinations Council, ''Authentication in an Electronic Banking Environment,'' (August 8, 2001) (''In general, multi-factor authentication should be used on higher risk systems.''); *see also* Complaint, *TaxSlayer,* FTC No. 1623063 (November 8, 2017) (alleging that company failed to provide reasonable security when it used single factor authentication).

[99] Proposed 16 CFR 314.4(c)(7). This proposed amendment is based on Model Law, Section 4(D)(2)(i), but removes the requirement that the audit trail be able to reconstruct material financial transactions. The proposed amendment requires only that the audit trail be designed to detect and respond to security events.

[100] *See* Computer Security Resource Center, Glossary, ''Audit Trail,'' *https://csrc.nist.gov/glossary/term/audit-trail.*

[101] Proposed 16 CFR 314.4(c)(8). This proposed amendment is based on Model Law, Section D(2)(k), but adds additional language from 23 NYCRR 500.13, which requires disposal of information that is no longer necessary for business operation or other legitimate business purposes, but provides an exception where disposal is not feasible.

[102] *See, e.g., Rite Aid Corp.,* FTC No. 072–3121 (November 22, 2010) (alleging that company failed to provide reasonable data security when it failed to implement policies and procedures to dispose securely of personal information).

[103] Proposed 16 CFR 314.4(c)(9). This proposed amendment is unique to this proposal and is not based on the Cybersecurity Regulations or the Model Law.

[104] *See, e.g.,* Rutgers Information Security, Change Management, *https://rusecure.rutgers.edu/content/change-management.*

necessary to achieve the objective, or unnecessarily modifies the current rule without creating a material benefit to security.

Proposed paragraph (c)(10) would require financial institutions to implement policies and procedures designed ''to monitor the activity of authorized users and detect unauthorized access or use of, or tampering with, customer information by such users.'' [105] In addition to threats posed by outside actors, authorized users such as employees and contractors can pose a substantial risk to the security of customer information.[106] This amendment would require financial institutions to take steps to monitor those users and their activities related to customer information in a manner adapted to the financial institution's particular operations and needs. The monitoring should allow financial institutions to identify inappropriate use of customer information by authorized users, such as transferring large amounts of data or accessing information for which the user has no legitimate use. This requirement is separate from the requirement to maintain ''audit trails,'' which would require logging of unusual events.

Proposed Paragraph (d)

Proposed paragraph (d)(1) would retain the current Rule's requirement that financial institutions ''[r]egularly test or otherwise monitor the effectiveness of the safeguards' key controls, systems, and procedures, including those to detect actual and attempted attacks on, or intrusions into, information systems.'' [107] The Commission views testing and monitoring as an integral part of any information security program.[108] Proposed paragraph (d)(2) provides further guidance noting that the monitoring should take the form of either ''continuous monitoring'' or ''periodic penetration testing and vulnerability assessments.'' Continuous monitoring is any system that allows real-time, ongoing monitoring of an information system's security, including monitoring for security threats, misconfigured systems, and other vulnerabilities.[109] The Commission seeks comment on whether these required enhancements are appropriate, as well as information about the potential costs or unintended consequences of this proposal.

If a financial institution does not adopt effective continuous monitoring, under the proposed amendments it would be required to engage in periodic penetration testing and vulnerability assessment consisting of no less than annual penetration testing based on the financial institution's risk assessment and biannual vulnerability assessments designed to detect publicly known vulnerabilities.[110] These tests may be performed directly by the financial institution or by third-party assessors, as long as they are designed to assess the systems that contain or can be used to access customer information and are performed effectively. The schedule of this required testing aligns with the requirements of the Cybersecurity Regulations. The Commission seeks comment on whether this schedule of penetration testing and vulnerability assessment is appropriate or whether the Rule should require these tasks to be performed more or less frequently. In particular, the Commission is interested in any data, research or case studies that the Commission could use to analyze what commenters advocate.

Proposed Paragraph (e)

Proposed paragraph (e) would require financial institutions to implement policies and procedures ''to ensure that personnel are able to enact [the financial institution's] information security program'' through various forms of training and education.[111] Training of employees is a critical part of information security, as employees will be the ones enforcing and implementing any information security program.[112] First, financial institutions would be required to provide their personnel with ''security awareness training that is updated to reflect risks identified by the risk assessment.'' [113] This requirement would apply to all personnel that have the ability to handle, access, or dispose of customer information. The training would be designed to inform personnel of the risks to customer information and the financial institution's policies and procedures to minimize those risks.[114]

Second, financial institutions would be required to ''[u]tiliz[e] qualified information security personnel,'' employed either by them or by affiliates or service providers, ''to manage [their] information security risks and to perform or oversee the information security program.'' [115] This amendment is designed to ensure that information security personnel used by financial institutions are qualified for their positions and that sufficient personnel are used.

Third, financial institutions would be required to ''[p]rovid[e] information security personnel with security updates and training sufficient to address relevant security risks.'' [116] Maintaining awareness of emerging threats and vulnerabilities is a critical aspect of information security that the Commission believes was already a part of any information security program that complies with the existing Safeguards Rule. This amendment formalizes the requirement that financial institutions provide information security personnel with ongoing training to stay abreast of such developments. It is separate from the requirement to train all personnel generally, reflected in paragraph (e)(1).

Fourth, financial institutions would be required to ''[v]erify[ ] that key information security personnel take steps to maintain current knowledge of changing cybersecurity threats and countermeasures.'' [117] For example, a financial institution could offer incentives or funds for key personnel to undertake continuing education that addresses recent developments, include a requirement to stay abreast of security

[105] Proposed 16 CFR 314.4(c)(10). This proposed amendment is based on 23 NYCRR 500.14(a) and is functionally identical.

[106] *See, e.g.,* Complaint, *U.S.* v. *ChoicePoint Inc.,* No. 1:06-cv-00198–GET (N.D. Ga. January 30, 2006) (alleging that company failed to provide reasonable security when it failed to monitor the activities of authorized users).

[107] Proposed 16 CFR 314.4(d). This language is based on the current rule's requirement for regular testing, 16 CFR 314.4(c), but adds the requirement for either continuous monitoring or regular penetration testing and vulnerability assessments from 23 NYCRR 500.05.

[108] *See, e.g., U.S.* v. *VTech Electronics Limited,* No. 1:18-cv-00114 (N.D. Ill. Jan. 8, 2018) (alleging that company failed to provide reasonable information security when it failed to monitor its network and failed to perform vulnerability and penetration testing).

[109] Financial institutions that choose the option of continuous monitoring would also be satisfying 314.4(c)(10).

[110] Proposed 16 CFR 314.4(d)(1) and (2).

[111] Proposed 16 CFR 314.4(e).

[112] *See, e.g.,* Complaint, *Lenovo,* FTC No. 152–3134 (January 2, 2018) (alleging that company failed to provide reasonable security by failing to provide adequate data security training for employees responsible for testing third-party software); Complaint, *HTC America Inc.,* FTC No. 122 3049 (July 2, 2013) (alleging that company failed to implement adequate privacy and security guidance or training for its engineering staff).

[113] Proposed 16 CFR 314.4(e)(1). This proposed amendment is based on 23 NYCRR 500.14(b) and is functionally identical.

[114] The Commission offers educational material on data security that can aid financial institutions in developing training materials for their employees. *See, e.g.,* FTC Business Center, Data Security, *https://www.ftc.gov/tips-advice/business-center/privacy-and-security/data-security.*

[115] Proposed 16 CFR 314.4(e)(2). This proposed amendment is based on 23 NYCRR 500.10(a)(1) and is functionally identical.

[116] Proposed 16 CFR 314.4(e)(3). This proposed amendment is based on 23 NYCRR 500.10(a)(2) and is functionally identical.

[117] Proposed 16 CFR 314.4(e)(4). This proposed amendment is based on 23 NYCRR 500.10(a)(3) and is functionally identical.

research as part of their performance metrics, or conduct an annual assessment of key personnel's knowledge of threats related to their information system. This requirement would be in addition to the proposed requirement that data security personnel be provided ongoing training. The proposed amendment does not define ''key personnel'' as the Commission believes that which personnel are ''key'' will vary considerably from entity to entity and that each financial institution will need to determine which employees must maintain this knowledge based on their structure and risk assessments. In most cases, though, the Commission believes that at a minimum the CISO and senior cybersecurity personnel would be covered by this amendment. Although the Commission believes the proposed approach is sufficiently flexible, it seeks comment on whether these proposals create unintended consequences for businesses, may be more stringent than necessary to achieve the objective, and/or unnecessarily modifies the current rule without creating a material benefit to security. In particular, the Commission is interested in any data, research or case studies that the Commission could use to analyze what commenters advocate.

Proposed Paragraph (f)

Proposed paragraph (f) would retain the current Rule's requirement in existing paragraph (d) regarding the oversight of service providers, and add a requirement that financial institutions periodically assess service providers ''based on the risk they present and the continued adequacy of their safeguards.'' [118] The current Rule requires an assessment of service providers' safeguards only at the onboarding stage; the proposed addition is designed to require financial institutions to monitor their service providers on an ongoing basis to ensure that they are maintaining adequate safeguards to protect customer information that they possess or access.[119] This ongoing oversight could include investigating red flags raised by service providers' practices or conducting periodic assessments of service provider practices, depending on the circumstances.

Proposed Paragraph (g)

Proposed paragraph (g) would retain the language of existing paragraph (e) in the current Rule, which would continue to require financial institutions to evaluate and adjust their information security programs in light of the result of testing required by this section, material changes to their operations or business arrangements, or any other circumstances that they know or have reason to know may have a material impact on their information security program.[120] While proposed paragraph (d) would amplify the testing required under the current Rule, the requirement to evaluate and adjust the program in light of such testing remains the same.

Proposed Paragraph (h)

Proposed paragraph (h) would require financial institutions to establish incident response plans.[121] The written response plans would be required to be ''designed to promptly respond to, and recover from, any security event materially affecting the confidentiality, integrity, or availability of customer information'' in the financial institution's possession. The amendment would require the incident response plans to address the following areas: 1. The goals of the incident response plan; 2. the internal processes for responding to a security event; 3. the definition of clear roles, responsibilities and levels of decision-making authority; 4. external and internal communications and information sharing; 5. identification of requirements for the remediation of any identified weaknesses in information systems and associated controls; 6. documentation and reporting regarding security events and related incident response activities; and 7. the evaluation and revision as necessary of the incident response plan following a security event. The proposed incident response plan requirement focuses on preparing financial institutions to respond promptly and appropriately to security events and to mitigate any weaknesses in their information systems accordingly. It is not intended to create any independent reporting or notification requirements, nor to conflict with any such requirements to which financial institutions are already subject. The proposed requirement regarding ''documentation and reporting regarding security events and related incident response activities'' would require incident response plans to document any notification or reporting requirements imposed by other federal or state laws, but does not in itself impose any such requirement.

The Commission seeks comment on whether the proposed amendment should require that financial institutions report security events to the Commission. The Cybersecurity Regulations require covered entities to report security events to the superintendent of the Department of Financial Services, but the proposed rule does not have a similar provision. The Commission seeks comment on whether such a provision should be added and, if so, what the elements of such a provision should be. Specifically, the Commission seeks comment on 1. the appropriate deadline for reporting security events after discovery; 2. whether all security events should require notification or whether notification should be required only under certain circumstances, such as a determination of a likelihood of harm to customers or that the event affects a certain number of customers; 3. whether such reports should be made public; 4. whether the events involving encrypted information should be included in the requirement; and 5. whether the requirement should allow law enforcement agencies to prevent or delay notification if notification would affect law-enforcement investigations.

In addition to seeking comment on the content of the plan, the Commission seeks comment on whether the proposed amendment would conflict with breach notification or reporting laws already in existence. Some states have enacted breach notification laws that exempt companies that maintain breach response procedures that are compliant with certain federal regulations from having to meet the requirements of the state's breach notification law. For example, Delaware's breach notification law states:

> A person that is regulated by state or federal law, including . . . the Gramm Leach Bliley Act . . . and that maintains procedures for a breach of security pursuant to the laws, rules, regulations, guidance, or guidelines established by its primary or functional state or federal regulator is deemed to be in compliance with this chapter if the person notifies affected Delaware residents in accordance with the

[118] Proposed 16 CFR 314.4(g).

[119] The proposed addition is based on a similar provision in the Cybersecurity Regulations. 23 NYCRR 500.11(a)(4).

[120] Proposed 16 CFR 314.4(g).

[121] Proposed 16 CFR 314.4(h). This proposed amendment is based on 23 NYCRR 500.16. The proposed amendment, however, requires the plan to address situations when customer information has been compromised, rather than a portion of the financial institution's information system. In addition, proposed section 314.4(h) does not require the incident response plan to address the continuing functionality of any aspect of the financial institution's business or operations, as continuity of operations is not relevant to Congress' mandate under the GLBA, which is to protect customer information.

maintained procedures when a breach of security occurs.[122]

The Commission seeks comment on whether the introduction of the proposed requirement for an incident response plan would cause financial institutions to be exempt from this, or similar, state breach notification laws, and if so, how this should affect the Commission's decision about whether to require an incident response plan in the Rule.[123]

Proposed Paragraph (i)

Proposed paragraph (i) would require a financial institution's CISO to ''report in writing, at least annually, to [the financial institution's] board of directors or equivalent governing body'' regarding the following information: 1. The overall status of the information security program and financial institution's compliance with the Safeguards Rule; and 2. material matters related to the information security program, addressing issues such as risk assessment, risk management and control decisions, service provider arrangements, results of testing, security events or violations and management's responses thereto, and recommendations for changes in the information security program.[124] For financial institutions that do not have a board of directors or equivalent, the CISO must make the report to a senior officer responsible for the financial institution's information security program. This amendment is designed to ensure that the governing body of the financial institution is engaged with and informed about the state of the financial institution's information security program. Likewise, an annual written report may create accountability for the CISO by requiring the CISO to set forth the status of information security program for the governing body. The Commission requests comment on whether the burden of a required annual report would outweigh the benefits, whether the report should have other required components, or whether particular components are unnecessary.

In addition, the Commission requests comments on whether the proposed rule should also require the Board or equivalent governing body to certify compliance with the Rule. The Commission seeks comment on whether such a requirement would appropriately increase the engagement of the governing body of the financial institution in the information security program or whether it would create too much burden on financial institutions to independently assess the program.

The Commission also requests comment on how such a requirement would impact corporate governance; what precedents exist for federally-mandated board reporting on specific management issues, and analyses of their efficacy; and what effect requiring reporting to the board or certification by it would have.

Proposed Amendments to Section 314.5: Effective Date

This proposed amendment replaces the existing effective date of the Rule. In its place, this amendment provides that certain elements of the information security program would not be required until six months after the publication of a final rule rather than immediately upon publication. The paragraphs that would have a delayed effective date are: 314.4(a), related to the appointment of a CISO; 314.4(b)(1), relating to conducting a written risk assessment; 314.4(c)(1)–(10), setting forth the new elements of the information security program; 314.4(d)(2), requiring continuous monitoring or annual penetration testing and biannual vulnerability assessment; 314.4(e), requiring training for personnel; 314.4(f)(3), requiring periodic assessment of service providers; 314.4(h), requiring a written incident response plan; and 314.4(i), requiring annual written reports from the CISO. The effective date of these elements would be delayed because financial institutions may need to take steps to bring their information security programs into compliance with these new requirements. All other requirements under the Safeguards Rule would remain in effect during this six-month period. The elements that would be required immediately upon publication are ones that are already required under the current Rule, such as the requirement to have a written security program (314.3(a)); to conduct a risk assessment (314.4(b)); to design and implement safeguards to control the risks identified in the risk assessment (314.4(c)); to regularly test or otherwise monitor the effectiveness of the safeguards' key controls, systems, and procedures (314.4(d)(1)); to oversee service providers at the onboarding stage (314.4(f)); and to evaluate and adjust the security program in light of the results of testing and monitoring (314.4(g)). These remaining requirements largely mirror the requirements of the existing Rule. The Commission requests comment on this approach.

Proposed Section 314.6: Exceptions

Proposed section 314.6 is a new section that would exempt financial institutions that maintain relatively small amounts of customer information from certain requirements of the amended Safeguards Rule. The exceptions would apply to financial institutions that maintain customer information concerning fewer than five thousand consumers.[125] Such financial institutions would not be required to comply with the following subsections: 314.4(b)(1), requiring a written risk assessment; 314.4(d)(2), requiring continuous monitoring or annual penetration testing and biannual vulnerability assessment; 314.4(h), requiring a written incident response plan; and 314.4(i), requiring an annual written report by the CISO. This proposed section is intended to reduce the burden on smaller financial institutions. The Commission believes that the paragraphs subject to this exemption are the ones that are most likely to cause undue burden on smaller financial institutions. For example, requiring continuous monitoring or a set schedule of testing might be too expensive, depending on the circumstances.

The remaining sections of the amended Safeguards Rule would apply to these smaller financial institutions in the same way as other financial institutions. Exempted financial institutions would still need to conduct risk assessments (314.4(b)), design and implement a written information security program with the required elements (314.3 and 314.4(c)), utilize qualified information security personnel and train employees (314.4(e)), monitor activity of authorized users (314.4(c)(10)), oversee service providers (314.4(f)), and evaluate and adjust their information security program (314.4(g)). The Commission seeks comment on whether such exceptions are appropriate or whether all financial institutions should be required to comply with all of the proposed amendments. The Commission also

[122] Del. Code tit. 6, section 12B–103(b).

[123] The Commission is not proposing adding an independent breach notification to the Rule. A federal standard under GLB would be largely redundant because of state breach notification laws and because a requirement under the Rule would have limited effect, because the Commission cannot obtain civil penalties for violations of the Rule. The Commission, however, seeks comments on whether adding a breach notification requirement to the Rule would benefit consumers.

[124] Proposed 16 CFR 314.4(i). This proposed amendment is based on 23 NYCRR 500.04(b), but borrows from the Model Law the requirements for the contents of the annual report. Model Law, Section E(2). The Commission believes the language from the Model Law is clearer and tied more directly to the requirements of the proposed amendments.

[125] Proposed 16 CFR 314.6.

seeks comment on whether the exempted paragraphs are appropriate. Finally, the Commission seeks comment on whether the use of the number of customers concerning whom the financial institution retains customer information is the most effective way to determine which financial institutions should be exempted and if so, whether five thousand is an appropriate number.

IV. Request for Comment

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before June 3, 2019. Write ''Safeguards Rule, 16 CFR part 314, Project No. 145407'' on the comment. Your comment, including your name and your state, will be placed on the public record of this proceeding, including the *https://www.regulations.gov* website.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comment online. To make sure that the Commission considers your online comment, you must file it at *https://www.regulations.gov* by following the instructions on the web-based form.

If you file your comment on paper, write ''Safeguards Rule, 16 CFR part 314, Project No. P145407'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex B), Washington, DC 20580; or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex B), Washington, DC 20024. If possible, please submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible website, *https://www.regulations.gov,* you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential,'' as provided by section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2), including in particular, competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comments to be withheld from the public record.[126] Your comment will be kept confidential only if the FTC General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the *www.regulations.gov* website, we cannot redact or remove your comment from the FTC website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the Commission website at *https://www.ftc.gov* to read this document and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before June 3, 2019. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

IV. Communications by Outside Parties to the Commissioners or Their Advisors

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding, from any outside party to any Commissioner or Commissioner's advisor, will be placed on the public record.[127]

V. Paperwork Reduction Act

The Paperwork Reduction Act (''PRA''), 44 U.S.C. chapter 35, requires federal agencies to seek and obtain OMB approval before undertaking a collection of information directed to ten or more persons.[128] A ''collection of information'' occurs when ten or more persons are asked to report, provide, disclose, or record information in response to ''identical questions.''[129] Applying these standards, neither the Safeguards Rule nor the proposed amendments constitute a ''collection of information.''[130] The Rule calls upon affected financial institutions to develop or strengthen their information security programs in order to provide reasonable safeguards. Under the Rule, each financial institution's safeguards will vary according to its size and complexity, the nature and scope of its activities, and the sensitivity of the information involved. For example, a financial institution with numerous employees would develop and implement employee training and management procedures beyond those that would be appropriate or reasonable for a sole proprietorship, such as an individual tax preparer or mortgage broker. Similarly, a financial institution that shares customer information with numerous service providers would need to take steps to ensure that such information remains protected, while a financial institution with no service providers would not need to address this issue. Thus, although each financial institution must summarize its compliance efforts in one or more written documents, the discretionary balancing of factors and circumstances that the Rule allows—including the myriad operational differences among businesses that it contemplated—does not require entities to answer ''identical questions'' and therefore does not trigger the PRA's requirements.

The proposed amendments would not change this analysis because they would retain the existing Rule's process-based approach, allowing financial institutions to tailor their programs to reflect the financial institutions' size, complexity, and operations, and to the sensitivity and amount of customer information they collect. For example, the proposed amendment to section 314.4(b) would require a written risk assessment, but each risk assessment will reflect the particular structure and operation of the financial institution and, though each assessment must include certain criteria, these are only general guidelines and do not consist of ''identical questions.'' Similarly, the proposed amendment to section 314.4(h), which would require a written

[126] *See* 16 CFR 4.9(c).

[127] *See* 16 CFR 1.26(b)(5).

[128] 44 U.S.C. 3502(3)(A)(i).

[129] *See* 44 U.S.C. 3502(3)(A).

[130] *See* 67 FR 36484, 36491 (May 23, 2002).

incident response plan, is only an extension of the preexisting requirement of a written information security plan and would necessarily vary significantly based on factors such as the financial institution's internal procedures, which officials within the financial institution have decision-making authority, how the financial institution communicates internally and externally, and the structure of the financial institution's information systems. Likewise, the proposed requirement for CISOs to produce annual reports under proposed section 314.4(i) does not consist of answers to identical questions, as the content of these reports would vary considerably between financial institutions and CISOs are given flexibility in deciding what to include in the reports.

Finally, the proposed amendments that would modify the definition of ''financial institution'' to include ''activities incidental to financial activities'' and therefore bring finders under the scope of the Rule do not constitute a ''collection of information,'' and therefore would not trigger the PRA's requirements.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires an agency to either provide an Initial Regulatory Flexibility Analysis with a proposed rule, or certify that the proposed rule will not have a significant impact on a substantial number of small entities.[131] The Commission does not expect that this Rule, if adopted, would have the threshold impact on small entities. First, most of the burdens flow from the mandates of the Act, not from the specific provisions of the proposed Rule. Second, the proposed Rule imposes requirements that are scalable according to the size and complexity of each institution, the nature and scope of its activities, and the sensitivity of its information. Thus, the burden is likely to be less on small institutions, to the extent that their operations are smaller or less complex. In addition, smaller entities are exempted from many requirements of the proposed amendments. Nonetheless, the Commission has determined that it is appropriate to publish an Initial Regulatory Flexibility Analysis in order to inquire into the impact of the proposed Rule on small entities. The Commission invites comment on the burden on any small entities that would now be covered, but previously were not covered, if the definition of ''financial institution'' is modified as proposed, and the burden on small entities created by the other proposed amendments. The Commission has prepared the following analysis.

1. Reasons for the Proposed Rule

The Commission proposes to make the rule clearer by including a definition of ''financial institution'' and related examples in the Safeguards Rule rather than cross-referencing them from the Privacy Rule. The Commission also proposes expanding the definition of ''financial institution'' in the Rule to include entities that are engaged in activities that are incidental to financial activities. This change would bring ''finders'' within the scope of the Rule. This change would harmonize the Rule with other agencies' rules and would require finders that collect consumers' sensitive financial information to comply with the Safeguards Rule's process-based approach to protect that data.

In addition, the Commission proposes to modify the Safeguards Rule to include more detailed requirements for the information security program required by the Rule. The Rule would continue to be process-based and flexible based on the financial institution's size and complexity. The Commission does propose to exempt smaller institutions from certain requirements that require additional written product and might pose a greater burden on smaller entities.

2. Statement of Objectives and Legal Basis

The objectives of the proposed Rule are discussed above. The legal basis for the proposed rule is section 501(b) of the GLBA.

3. Description of Small Entities to Which the Rule Will Apply

Determining a precise estimate of the number of small entities [132]—including newly covered entities under the modified definition of financial institution—is not readily feasible. Financial institutions already covered by the existing Rule include lenders, financial advisors, loan brokers and servicers, collection agencies, financial advisors, tax preparers, and real estate settlement services, to the extent that they have ''customer information'' within the meaning of the Rule. If the proposed Rule is finalized, finders will also be covered. However, it is not known whether any finders are small entities, and if so, how many there are. The Commission requests comment and information on the number of ''finders'' that would be covered by the Rule's modified definition of ''financial institution,'' and how many of those finders, if any, are small entities.

4. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The proposed Rule does not impose any reporting or any specific recordkeeping requirements within the meaning of the PRA, as discussed herein.

With regard to other compliance requirements, the proposed addition of definitions and examples from the Privacy Rule is not expected to have an impact on covered financial institutions, including those that may be small entities, if any. (The preceding section of this analysis discusses classes of covered financial institutions that may qualify as small entities.) The proposed addition of ''finders'' to the definition of financial institutions will impose the obligations of the Rule on entities that engage in ''finding'' activity and also collect customer information. The proposed addition of more detailed requirements may require some financial institutions to perform additional risk assessments, monitoring, or to create additional safeguards as set forth in the proposed Rule. These obligations will require employees or third-party service providers with skills in information security, but the Commission believes that most financial institutions will have already complied with many parts of the proposed rule as part of their information security programs already required under the existing Rule. There may be additional related compliance costs (*e.g.,* legal, new equipment or systems, modifications to policies or procedures), but in the absence of supporting data,

[131] 5 U.S.C. 603 *et seq.*

[132] The U.S. Small Business Administration Table of Small Business Size Standards Matched to North American Industry Classification System Codes (''NAICS'') are generally expressed in either millions of dollars or number of employees. A size standard is the largest that a business can be and still qualify as a small business for Federal Government programs. For the most part, size standards are the annual receipts or the average employment of a firm. Depending on the nature of the financial services an institution provides, the size standard varies. By way of example, mortgage and nonmortgage loan brokers (NAICS code 522310) are classified as small if their annual receipts are $7.5 million or less. Consumer lending institutions (NAICS code 52291) are classified as small if their annual receipts are $38.5 million or less. Commercial banking and savings institutions (NAICS codes 522110 and 522120) are classified as small if their assets are $550 million or less. Assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year. The 2017 Table of Small Business Size Standards is available at *https://www.sba.gov/sites/default/files/files/Size_Standards_Table_2017.pdf.*

the Commission is unable to provide a complete or specific cost estimate. The Commission invites comment on the costs of the amended Rule for small entities to comply and to newly covered financial institutions (finders) of establishing and operating an information security program for such entities, to the extent, if any, they are small entities.

5. Identification of Duplicative, Overlapping, or Conflicting Federal Rules

As mentioned above, the Commission is proposing to incorporate the definition of ''financial institution'' and the accompanying examples from the Privacy Rule to the Safeguards Rule. This modification will have no substantive effect on the scope of the Rule or its enforcement. The change is designed only to increase the clarity of the Rule. The Commission believes that incorporating this definition will not cause any additional burden on covered entities. Separately, as also noted above, the Commission proposes to revise the definition of ''financial institution'' to cover finders. The Commission is requesting comment on the extent to which other federal standards involving privacy or security or information may duplicate and/or satisfy or possibly conflict with the Rule's requirements for newly covered financial institutions.

The Commission is also proposing amending the Rule to include more detailed requirements for the written information security plan required by the Rule. The Commission does not believe that the proposed amendments would conflict with any existing data security regulations, such as the Health Insurance Portability and Accountability Act Security Rule.[133] The Commission is requesting comment on the extent to which other federal standards involving privacy or security or information may duplicate and/or satisfy or possibly conflict with the proposed amendments to the Rule.

6. Discussion of Significant Alternatives

The standards in the proposed Rule allow a small financial institution to develop an information security program that is appropriate to its size and complexity, the nature and scope of its activities, and the sensitivity of any customer information at issue. The Commission is proposing to include certain design standards (*e.g.,* a company must implement encryption, authentication, incident response) in the Rule, in addition to the performance standards (reasonable security) that the Rule currently uses. As discussed, while these design standards may introduce some additional burden, the Commission believes that the additional burden will be minimal, as most information security programs under the Rule already meet most of these requirements. In addition, the proposed requirements are still designed to allow financial institutions flexibility in how and whether they should be implemented. For example, the requirement that encryption be used to protect customer information in transit and at rest may be met with effective alternative compensating controls if they are infeasible for a given financial institution.

In addition, the Proposed Rule exempts financial institutions that maintain relatively small amounts of customer information from certain requirements of the amended Safeguards Rule. The exceptions would apply to financial institutions that maintain customer information concerning fewer than five thousand consumers. The Commission believes that exempted financial institutions will generally be small entities. Such financial institutions would not be required to perform a written risk assessment, conduct continuous monitoring or annual penetration testing and biannual vulnerability assessment, prepare a written incident response plan, or prepare an annual written report by the CISO. These proposed exemptions are intended to reduce the burden on smaller financial institutions. The Commission believes that the obligations subject to this exemption are the ones that are most likely to cause undue burden on smaller financial institutions.

Exempted financial institutions will still need to conduct risk assessments, design and implement a written information security program with the required elements, utilize qualified information security personnel and train employee, monitor activity of authorized users, oversee service providers, and evaluate and adjust their information security program. These are core obligations under the Rule that any financial institution that collects customer information must meet, regardless of size.

The Commission welcomes comment on any significant alternative consistent with the GLBA that would minimize the impact on small entities of these proposed amendments, including institutions that would be newly covered under the amended definition of ''financial institution.''

[133] 45 CFR part 160; 45 CFR part 164, subparts A and C.

List of Subjects in 16 CFR Part 314

Consumer protection, Credit, Data protection, Privacy, Trade practices.

For the reasons stated above, the Federal Trade Commission proposes to amend 16 CFR part 314 as follows:

PART 314—STANDARDS FOR SAFEGUARDING CUSTOMER INFORMATION

■ 1. The authority citation for part 314 continues to read as follows:

Authority: 15 U.S.C. 6801(b), 6805(b)(2).

■ 2. Revise § 314.1(b) to read as follows:

§ 314.1 Purpose and scope.

* * * * *

(b) *Scope.* This part applies to the handling of customer information by all financial institutions over which the Federal Trade Commission (''FTC'' or ''Commission'') has jurisdiction. Namely, this part applies to those ''financial institutions'' over which the Commission has rulemaking authority pursuant to section 501(b) of the Gramm-Leach-Bliley Act. An entity is a ''financial institution'' if its business is engaging in an activity that is financial in nature or incidental to such financial activities as described in section 4(k) of the Bank Holding Company Act of 1956, 12 U.S.C. 1843(k), which cross-references activities enumerated by the Federal Reserve Board in 12 CFR 225.28 and 12 CFR 225.86. The ''financial institutions'' subject to the Commission's enforcement authority are those that are not otherwise subject to the enforcement authority of another regulator under Section 505 of the Gramm-Leach-Bliley Act, 15 U.S.C. 6805. More specifically, those entities include, but are not limited to, mortgage lenders, ''pay day'' lenders, finance companies, mortgage brokers, account servicers, check cashers, wire transferors, travel agencies operated in connection with financial services, collection agencies, credit counselors and other financial advisors, tax preparation firms, non-federally insured credit unions, investment advisors that are not required to register with the Securities and Exchange Commission, and entities acting as finders. They are referred to in this part as ''You.'' This part applies to all customer information in your possession, regardless of whether such information pertains to individuals with whom you have a customer relationship, or pertains to the customers of other financial institutions that have provided such information to you.

■ 3. Revise § 314.2 to read as follows:

§ 314.2 Definitions.

(a) *In general.* Except as modified by this part or unless the context otherwise requires, the terms used in this part have the same meaning as set forth in the Commission's rule governing the Privacy of Consumer Financial Information, 16 CFR part 313.

(b) *Authorized user* means any employee, contractor, agent, or other person that participates in your business operations and is authorized to access and use any of your information systems and data.

(c) *Security event* means an event resulting in unauthorized access to, or disruption or misuse of, an information system or information stored on such information system.

(d) *Customer information* means any record containing nonpublic personal information, as defined in 16 CFR 313.3(n), about a customer of a financial institution, whether in paper, electronic, or other form, that is handled or maintained by or on behalf of you or your affiliates.

(e) *Encryption* means the transformation of data into a form that results in a low probability of assigning meaning without the use of a protective process or key.

(f)(1) *Financial institution* means any institution the business of which is engaging in an activity that is financial in nature or incidental to such financial activities as described in section 4(k) of the Bank Holding Company Act of 1956, 12 U.S.C. 1843(k). An institution that is significantly engaged in financial activities, or significantly engaged in activities incidental to such financial activities, is a financial institution.

(2) *Examples of financial institutions.* (i) A retailer that extends credit by issuing its own credit card directly to consumers is a financial institution because extending credit is a financial activity listed in 12 CFR 225.28(b)(1) and referenced in section 4(k)(4)(F) of the Bank Holding Company Act, 12 U.S.C. 1843(k)(4)(F), and issuing that extension of credit through a proprietary credit card demonstrates that a retailer is significantly engaged in extending credit.

(ii) An automobile dealership that, as a usual part of its business, leases automobiles on a nonoperating basis for longer than 90 days is a financial institution with respect to its leasing business because leasing personal property on a nonoperating basis where the initial term of the lease is at least 90 days is a financial activity listed in 12 CFR 225.28(b)(3) and referenced in section 4(k)(4)(F) of the Bank Holding Company Act, 12 U.S.C. 1843(k)(4)(F).

(iii) A personal property or real estate appraiser is a financial institution because real and personal property appraisal is a financial activity listed in 12 CFR 225.28(b)(2)(i) and referenced in section 4(k)(4)(F) of the Bank Holding Company Act, 12 U.S.C. 1843(k)(4)(F).

(iv) A career counselor that specializes in providing career counseling services to individuals currently employed by or recently displaced from a financial organization, individuals who are seeking employment with a financial organization, or individuals who are currently employed by or seeking placement with the finance, accounting or audit departments of any company is a financial institution because such career counseling activities are financial activities listed in 12 CFR 225.28(b)(9)(iii) and referenced in section 4(k)(4)(F) of the Bank Holding Company Act, 12 U.S.C. 1843(k)(4)(F).

(v) A business that prints and sells checks for consumers, either as its sole business or as one of its product lines, is a financial institution because printing and selling checks is a financial activity that is listed in 12 CFR 225.28(b)(10)(ii) and referenced in section 4(k)(4)(F) of the Bank Holding Company Act, 12 U.S.C. 1843(k)(4)(F).

(vi) A business that regularly wires money to and from consumers is a financial institution because transferring money is a financial activity referenced in section 4(k)(4)(A) of the Bank Holding Company Act, 12 U.S.C. 1843(k)(4)(A), and regularly providing that service demonstrates that the business is significantly engaged in that activity.

(vii) A check cashing business is a financial institution because cashing a check is exchanging money, which is a financial activity listed in section 4(k)(4)(A) of the Bank Holding Company Act, 12 U.S.C. 1843(k)(4)(A).

(viii) An accountant or other tax preparation service that is in the business of completing income tax returns is a financial institution because tax preparation services is a financial activity listed in 12 CFR 225.28(b)(6)(vi) and referenced in section 4(k)(4)(G) of the Bank Holding Company Act, 12 U.S.C. 1843(k)(4)(G).

(ix) A business that operates a travel agency in connection with financial services is a financial institution because operating a travel agency in connection with financial services is a financial activity listed in 12 CFR 225.86(b)(2) and referenced in section 4(k)(4)(G) of the Bank Holding Company Act, 12 U.S.C. 1843(k)(4)(G).

(x) An entity that provides real estate settlement services is a financial institution because providing real estate settlement services is a financial activity listed in 12 CFR 225.28(b)(2)(viii) and referenced in section 4(k)(4)(F) of the Bank Holding Company Act, 12 U.S.C. 1843(k)(4)(F).

(xi) A mortgage broker is a financial institution because brokering loans is a financial activity listed in 12 CFR 225.28(b)(1) and referenced in section 4(k)(4)(F) of the Bank Holding Company Act, 12 U.S.C. 1843(k)(4)(F).

(xii) An investment advisory company and a credit counseling service are each financial institutions because providing financial and investment advisory services are financial activities referenced in section 4(k)(4)(C) of the Bank Holding Company Act, 12 U.S.C. 1843(k)(4)(C).

(xiii) A company acting as a finder in bringing together one or more buyers and sellers of any product or service for transactions that the parties themselves negotiate and consummate is a financial institution because acting as a finder is an activity that is financial in nature or incidental to a financial activity listed in 12 CFR 225.86(d)(1).

(3) *Financial institution* does not include:

(i) Any person or entity with respect to any financial activity that is subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*);

(ii) The Federal Agricultural Mortgage Corporation or any entity chartered and operating under the Farm Credit Act of 1971 (12 U.S.C. 2001 *et seq.*);

(iii) Institutions chartered by Congress specifically to engage in securitizations, secondary market sales (including sales of servicing rights) or similar transactions related to a transaction of a consumer, as long as such institutions do not sell or transfer nonpublic personal information to a nonaffiliated third party other than as permitted by sections 313.14 and 313.15; or

(iv) Entities that engage in financial activities but that are not significantly engaged in those financial activities, and entities that engage in activities incidental to financial activities but that are not significantly engaged in activities incidental to financial activities.

(4) *Examples of entities that are not significantly engaged in financial activities.*

(i) A retailer is not a financial institution if its only means of extending credit are occasional ''lay away'' and deferred payment plans or accepting payment by means of credit cards issued by others.

(ii) A retailer is not a financial institution merely because it accepts payment in the form of cash, checks, or credit cards that it did not issue.

(iii) A merchant is not a financial institution merely because it allows an individual to ''run a tab.''

(iv) A grocery store is not a financial institution merely because it allows individuals to whom it sells groceries to cash a check, or write a check for a higher amount than the grocery purchase and obtain cash in return.

(g) *Information security program* means the administrative, technical, or physical safeguards you use to access, collect, distribute, process, protect, store, use, transmit, dispose of, or otherwise handle customer information.

(h) *Information system* means a discrete set of electronic information resources organized for the collection, processing, maintenance, use, sharing, dissemination or disposition of electronic information, as well as any specialized system such as industrial/process controls systems, telephone switching and private branch exchange systems, and environmental controls systems.

(i) *Multi-factor authentication* means authentication through verification of at least two of the following types of authentication factors:

(1) Knowledge factors, such as a password;

(2) Possession factors, such as a token; or

(3) Inherence factors, such as biometric characteristics.

(j) *Penetration testing* means a test methodology in which assessors attempt to circumvent or defeat the security features of an information system by attempting penetration of databases or controls from outside or inside your information systems.

(k) *Service provider* means any person or entity that receives, maintains, processes, or otherwise is permitted access to customer information through its provision of services directly to a financial institution that is subject to this part.

■ 4. Revise § 314.3(a) as follows:

§ 314.3 Standards for safeguarding customer information.

(a) *Information security program.* You shall develop, implement, and maintain a comprehensive information security program that is written in one or more readily accessible parts and contains administrative, technical, and physical safeguards that are appropriate to your size and complexity, the nature and scope of your activities, and the sensitivity of any customer information at issue. The information security program shall include the elements set forth in section 314.4 and shall be reasonably designed to achieve the objectives of this part, as set forth in paragraph (b) of this section.

* * * * *

■ 5. Revise § 314.4 as follows:

§ 314.4 Elements.

In order to develop, implement, and maintain your information security program, you shall:

(a) Designate a qualified individual responsible for overseeing and implementing your information security program and enforcing your information security program (for purposes of this part, ''Chief Information Security Officer'' or ''CISO''). The CISO may be employed by you, an affiliate, or a service provider. To the extent this requirement is met using a service provider or an affiliate, you shall:

(1) Retain responsibility for compliance with this part;

(2) Designate a senior member of your personnel responsible for direction and oversight of the CISO; and

(3) Require the service provider or affiliate to maintain an information security program that protects you in accordance with the requirements of this Part.

(b) Base your information security program on a risk assessment that identifies reasonably foreseeable internal and external risks to the security, confidentiality, and integrity of customer information that could result in the unauthorized disclosure, misuse, alteration, destruction or other compromise of such information, and assesses the sufficiency of any safeguards in place to control these risks.

(1) The risk assessment shall be written and shall include:

(i) Criteria for the evaluation and categorization of identified security risks or threats you face;

(ii) Criteria for the assessment of the confidentiality, integrity, and availability of your information systems and customer information, including the adequacy of the existing controls in the context of the identified risks or threats you face; and

(iii) Requirements describing how identified risks will be mitigated or accepted based on the risk assessment and how the information security program will address the risks.

(2) You shall periodically perform additional risk assessments that reexamine the reasonably foreseeable internal and external risks to the security, confidentiality, and integrity of customer information that could result in the unauthorized disclosure, misuse, alteration, destruction or other compromise of such information, and reassess the sufficiency of any safeguards in place to control these risks.

(c) Design and implement safeguards to control the risks you identity through risk assessment, including:

(1) Place access controls on information systems, including controls to authenticate and permit access only to authorized individuals to protect against the unauthorized acquisition of customer information and to periodically review such access controls;

(2) Identify and manage the data, personnel, devices, systems, and facilities that enable you to achieve business purposes in accordance with their relative importance to business objectives and your risk strategy;

(3) Restrict access at physical locations containing customer information only to authorized individuals;

(4) Protect by encryption all customer information held or transmitted by you both in transit over external networks and at rest. To the extent you determine that encryption of customer information, either in transit over external networks or at rest, is infeasible, you may instead secure such customer information using effective alternative compensating controls reviewed and approved by your CISO;

(5) Adopt secure development practices for in-house developed applications utilized by you for transmitting, accessing, or storing customer information and procedures for evaluating, assessing, or testing the security of externally developed applications you utilize to transmit, access, or store customer information;

(6) Implement multi-factor authentication for any individual accessing customer information. Multi-factor authentication shall be utilized for any individual accessing your internal networks that contain customer information, unless your CISO has approved in writing the use of reasonably equivalent or more secure access controls;

(7) Include audit trails within the information security program designed to detect and respond to security events;

(8) Develop, implement, and maintain procedures for the secure disposal of customer information in any format that is no longer necessary for business operations or for other legitimate business purposes, except where such information is otherwise required to be retained by law or regulation, or where targeted disposal is not reasonably

feasible due to the manner in which the information is maintained;

(9) Adopt procedures for change management; and

(10) Implement policies, procedures and controls designed to monitor the activity of authorized users and detect unauthorized access or use of, or tampering with, customer information by such users.

(d)(1) Regularly test or otherwise monitor the effectiveness of the safeguards' key controls, systems, and procedures, including those to detect actual and attempted attacks on, or intrusions into, information systems.

(2) The monitoring and testing shall include continuous monitoring or periodic penetration testing and vulnerability assessments. Absent effective continuous monitoring or other systems to detect, on an ongoing basis, changes in information systems that may create vulnerabilities, you shall conduct:

(i) Annual penetration testing of your information systems determined each given year based on relevant identified risks in accordance with the risk assessment; and

(ii) Biannual vulnerability assessments, including any systemic scans or reviews of information systems reasonably designed to identify publicly known security vulnerabilities in your information systems based on the risk assessment.

(e) Implement policies and procedures to ensure that personnel are able to enact your information security program by:

(1) Providing your personnel with security awareness training that is updated to reflect risks identified by the risk assessment;

(2) Utilizing qualified information security personnel employed by you or an affiliate or service provider sufficient to manage your information security risks and to perform or oversee the information security program;

(3) Providing information security personnel with security updates and training sufficient to address relevant security risks; and

(4) Verifying that key information security personnel take steps to maintain current knowledge of changing information security threats and countermeasures.

(f) Oversee service providers, by:

(1) Taking reasonable steps to select and retain service providers that are capable of maintaining appropriate safeguards for the customer information at issue;

(2) Requiring your service providers by contract to implement and maintain such safeguards; and

(3) Periodically assessing your service providers based on the risk they present and the continued adequacy of their safeguards.

(g) Evaluate and adjust your information security program in light of the results of the testing and monitoring required by paragraph (d) of this section; any material changes to your operations or business arrangements; the results of risk assessments performed under paragraph (b)(2) of this section; or any other circumstances that you know or have reason to know may have a material impact on your information security program;

(h) Establish a written incident response plan designed to promptly respond to, and recover from, any security event materially affecting the confidentiality, integrity, or availability of customer information in your possession. Such incident response plan shall address the following areas:

(1) The goals of the incident response plan;

(2) The internal processes for responding to a security event;

(3) The definition of clear roles, responsibilities and levels of decision-making authority;

(4) External and internal communications and information sharing;

(5) Identification of requirements for the remediation of any identified weaknesses in information systems and associated controls;

(6) Documentation and reporting regarding security events and related incident response activities; and

(7) The evaluation and revision as necessary of the incident response plan following a security event.

(i) Require your CISO to report in writing, at least annually, to your board of directors or equivalent governing body. If no such board of directors or equivalent governing body exists, such report shall be timely presented to a senior officer responsible for your information security program. The report shall include the following information:

(1) The overall status of the information security program and your compliance with this Rule; and

(2) Material matters related to the information security program, addressing issues such as risk assessment, risk management and control decisions, service provider arrangements, results of testing, security events or violations and management's responses thereto, and recommendations for changes in the information security program.

■ 6. Revise § 314.5 to read as follows:

§ 314.5 Effective date.

Sections 314.4(a), 314.4(b)(1), 314.4(c)(1)–(10), 314.4(d)(2), 314.4(e), 314.4(f)(3), 314.4(h), and 314.4(i) are effective as of [six months after publication of the final rule].

■ 7. Add § 314.6, to read as follows:

§ 314.6 Exceptions.

Sections 314.4(b)(1), 314.4(d)(2), 314.4(h), and 314.4(i) do not apply to financial institutions that maintain customer information concerning fewer than five thousand consumers.

By direction of the Commission, Commissioner Phillips and Commissioner Wilson dissenting.

April J. Tabor,

Acting Secretary.

[**Note:** The following Dissenting Statement of Commissioner Noah Joshua Phillips and Commissioner Christine S. Wilson will not appear in the Code of Federal Regulations.]

Dissenting Statement of Commissioner Noah Joshua Phillips and Commissioner Christine S. Wilson

March 5, 2019

Today the Commission seeks public comment on a notice of proposed rulemaking (''NPRM'') to change the Standards for Safeguarding Customer Information (''Safeguards Rule'' or ''Rule'') under the Gramm-Leach-Bliley Act (''GLBA''). Recent high-profile data breaches underscore the importance of effective data security, which is why we strongly support the Commission's renewed calls for federal data security legislation.[1] We also share this Administration's goal of reducing regulation and controlling compliance costs. Any new regulation, even regarding a critical issue like data security, must be handled with care to avoid stifling innovation or entrenching incumbents.

Congress mandated data security and privacy for financial institutions in the GLBA and, for the past two decades, it has been the Commission's responsibility to set forth the regulations implementing those requirements. The Rule as written provides direction to financial institutions on how to protect data security—importantly, while not being overly prescriptive—in an area where standards continuously evolve. The current proposal, however, trades flexibility for a more prescriptive approach, potentially

[1] *See Oversight of the Federal Trade Commission: Hearing Before the Subcomm. on Consumer Protection, Product Safety, Insurance, and Data Security of the S. Comm. on Commerce, Science, and Transportation,* 115th Cong. 7 (2018) (statement of the Federal Trade Commission) (''The Commission continues to reiterate its longstanding bipartisan call for comprehensive data security legislation.''); Federal Trade Commission Staff, Comment to the National Telecommunications and Information Administration on Developing the Administration's Approach to Consumer Privacy (Nov. 9, 2018), *https://www.ftc.gov/policy/advocacy/advocacy-filings/2018/11/ftc-staff-comment-ntia-developing-administrations-approach.*

handicapping smaller players or newer entrants.[2]

As part of our regular process of regulatory review, the Commission first sought comments on updating the Safeguards Rule in September 2016.[3] When asked about the need for more specific requirements, commenters generally asked to leave the Rule in place, and to avoid more prescriptive regulation. Privacy advocates and an association owned by the largest commercial banks sought more detailed requirements.[4] Based on that record, and the adoption of several new state laws and regulations regarding data security of financial institutions, the Commission today proposes the latter course.

This approach concerns us for several reasons. *First,* some of the specific proposals track shortcomings the Commission has identified in its data security enforcement cases and investigations. Not all of these shortcomings concern firms covered by the Safeguards Rule and, in any event, they may not represent a broader trend that warrants a regulatory response. Therefore, it may not be appropriate to mandate such prescriptive standards for all market participants. To the extent that the Commission thinks it is appropriate to elucidate the regulation's reasonable care requirements, we have tools at our disposal—including speeches, testimony, analyses to aid public comment, information about the factors the Commission considered when closing investigations, and reports. Commentary like this can help financial institutions weigh whether precautions are reasonable based on the risks associated with how they use, collect, and store data, without imposing a one-size-fits-all approach. The question to be answered here is whether the existing Safeguards Rule, which addresses the protection of financial information, is inadequate to that purpose. Also important is the question of how firms governed by the Rule operate relative to ones in sectors that are not so governed.

Second, the proposed regulations may be premature for two reasons. They are based in substantial part on regulations promulgated two years ago by the New York State Department of Financial Services.[5] We do not have data about the impact and efficacy of those regulations, so whether to adopt a version of them at the federal level and whether that version should be a floor for or should preempt state-level rules seem like questions worthy of more study. Right now, Congress and the Executive Branch, including the leadership of the Senate committee with jurisdiction over financial institutions, are discussing potential privacy and data security legislation. The NPRM seeks comment on issues that are implicated in this debate, as well as issues not addressed in the New York rule, like data minimization/elimination and requiring a legitimate business justification for collecting data in the first instance. These topics in particular take us into a broader debate that belongs—and is being had—in Congress.[5] [6]

Third, the Safeguards Rule today is a flexible approach, appropriate to a company's size and complexity. This proposal would move us away from that approach. There are direct costs for enhanced precautions, but this record does not demonstrate that those costs will significantly reduce data security risks or significantly increase consumer benefits. The expansion of the Rule could create traps for the unwary, especially small and innovative businesses. Further, large incumbents can often absorb regulatory compliance costs more effectively than new entrants or smaller players, potentially decreasing competition. The proposed precautions, either individually or in the aggregate, may constitute best practices for certain firms. But the proliferation of procedural, technical, and governance requirements may have the unintended consequence of diluting core data security measures undertaken pursuant to the existing Safeguards Rule.

Finally, the NPRM proposes that the Commission substitute its own judgment for a private firm's governance decisions, including but not limited to the appropriate level of board engagement, hiring and training requirements, and program accountability structures. Data security is important, without doubt. In our enforcement and legislative advocacy, we focus a great deal on it. But take, for example, board engagement on data security. Whether and to what extent it should command the regular attention and personal liability of a company's board is precisely the kind of question firms are in a better position to evaluate than federal regulators. Other matters may be more important, including to the nation at large. A decade ago, our economy was brought low by what many view as improper risk assessment by financial institutions of their assets and liabilities. Maybe we want boards of financial institutions to spend more time assessing those risks. The point isn't that the answer is easy—the point is that we may not be the best qualified to supply it.

This is an NPRM, and the Commission is merely proposing new regulation and soliciting views on its impact. But we are also aware that the momentum behind an NPRM regularly results in the promulgation of new or revised rules. While the Commission is not making a final determination today, we are concerned that the specific suggestions herein will frame the debate so as to take the Commission in a direction that may be unwarranted (particularly given the prospect of legislation), and which may have negative repercussions. A review of the Safeguards Rule, especially in light of new legal developments, is warranted. But we should go where the evidence today leads us. We would strongly encourage those in industry, academia, and civil society with expertise in these areas to comment and provide evidence on this proposal.

For these reasons, we dissent.

[FR Doc. 2019–04981 Filed 4–3–19; 8:45 am]

BILLING CODE 6750–01–P

[2] *See, e.g.,* William A. Brock & David S. Evans, The Economics of Regulatory Tiering, 16 Rand J. Econ. 398, 399 (1985) (''[I]mposing uniform regulatory requirements across all types of businesses has a disparate impact on smaller businesses because there are scale economies in regulatory compliance. Scale economies may arise because there are fixed costs of complying with regulations. Larger businesses can average these fixed costs over a larger quantity of output and thereby achieve a competitive advantage over their smaller rivals. [¶] There is evidence that scale economies in compliance are quite extensive for some regulatory requirements.'') (citations omitted).

[3] Standards for Safeguarding Customer Information, 81 FR 61632 (Sept. 7, 2016) (to be codified at 16 CFR part 314). Comments are posted at *https://www.ftc.gov/policy/public-comments/2016/10/initiative-674.* The Commission has assigned each comment a number.

[4] Electronic Privacy Information Center, Comment Letter #30 on the Standards for Safeguarding Customer Information (Nov. 7, 2016); The Clearing House Association LLC, Comment Letter #35 on the Standards for Safeguarding Customer Information (Nov. 21, 2016).

[5] Cybersecurity Requirements for Financial Services Companies, 23 NYCRR 500, *et seq.* (2016).

[6] Press Release, S. Comm. on Banking Housing, and Urban Affairs, *Crapo, Brown Invite Feedback on Data Privacy, Protection and Collection* (Feb 13, 2019), *https://www.banking.senate.gov/newsroom/majority/crapo-brown-invite-feedback-on-data-privacy-protection-and-collection.*

[7] *See* Brock and Evans, *supra* note 2.

[8] Standards for Safeguarding Customer Information (proposed Mar. 5, 2019) (16 CFR part 314.4(i)) (requiring that Chief Information Security Officer (''CISO'') report in writing, at least annually, to board of directors or equivalent about the overall status and material matters related to the information security program based on the assumption that ''such reports will not be overly burdensome [because] . . . required information can be gathered throughout the year as part of managing the information security program and satisfying the other requirements of the proposed amendments.'') (quoting proposed NPRM).

[9] *Id.* at 314.4(e) (requiring the hiring of qualified and sufficient personnel, continuous training for key personnel, and verification of training).

[10] *Id.* at 314.4(a)(1) (prohibiting companies from designating more than one employee to coordinate information security programs and instead requiring the designation of ''a single qualified individual'' (CISO)); *Id.* at 314.4(a)(2) (requiring oversight of CISO by appropriate senior member of personnel); *Id.* at 314.4(h) (requiring a written incident response plan).

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5, 14, 75, 91, 92, 93, 135, 266, 570, 576, 578, 905, 964, 983, and 1000

[Docket No. FR–6085–P–01]

RIN 2501–AD87

Enhancing and Streamlining the Implementation of ''Section 3'' Requirements for Creating Economic Opportunities for Low- and Very Low-Income Persons and Eligible Businesses

AGENCY: Office of the Assistant Deputy Secretary for Field Policy and Management, HUD.

ACTION: Proposed rule.

SUMMARY: Section 3 of the Housing and Urban Development Act of 1968, as

amended by the Housing and Community Development Act of 1992 (Section 3), contributes to the establishment of stronger, more sustainable communities by ensuring that employment and other economic opportunities generated by Federal financial assistance for housing and community development programs are, to the greatest extent feasible, directed toward low- and very low-income persons, particularly those who receive government assistance for housing. In accordance with statutory authority, HUD is charged with the responsibility to implement and enforce Section 3. HUD's regulations implementing the requirements of Section 3 have not been updated since 1994 and are not as effective as HUD believes they could be. This proposed rule would update HUD's Section 3 regulations to create more effective incentives for employers to retain and invest in their low- and very low-income workers, streamline reporting requirements by aligning them with typical business practices, provide for program-specific oversight, and clarify the obligations of entities that are covered by Section 3. The purpose of these changes is to increase the impact of the Section 3 requirements for low- and very low-income persons, increase compliance with Section 3 requirements, and reduce regulatory burden. HUD is also publishing elsewhere in this issue of the **Federal Register** a proposed notification for comment that would set initial benchmarks for measuring Section 3 compliance with the final rule.

DATES: *Comment Due Date:* June 3, 2019.

ADDRESSES: Interested persons are invited to submit comments regarding this rule. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

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 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 two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (fax) comments are not acceptable.

Public Inspection of Public Comments. 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 appointment to review the public comments must be scheduled in advance 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. Copies of all comments submitted will be available for inspection and downloading at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For Public Housing Financial Assistance: Merrie Nichols-Dixon, Director, Office of Policy Program and Legislation, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW, Room 3178, Washington, DC 20410; telephone 202–402–4673 (not a toll-free number); for Community Development Block Grant (CDBG)/CDBG Disaster Recovery/Section 108 Loan Guarantee Program: Jessie Handforth Kome, Deputy Director, Office of Block Grant Assistance, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street SW, Room 7286, Washington, DC 20410; telephone 202–402–5539 (voice/TDD) (not a toll-free numbers); for HOME or Housing Trust Fund Section 3 projects: Virginia Sardone, Director, Office of Affordable Housing Program, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street SW, Room 10168, Washington, DC 20410; telephone 202–402–4606 (not a toll-free number), and for Office of Housing programs: Thomas R. Davis, Director, Office of Recapitalization, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW, Room 6230, Washington, DC 20410; telephone 202–402–7549 (voice/TDD) (these are not toll-free numbers). Persons with hearing or speech impairments may access this number through TTY by calling the Federal Relay Service, at toll-free, 800–877–8339. General email inquiries regarding Section 3 may be sent to: *section3@hud.gov.*

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose of Regulatory Action

This proposed rule would update the regulations implementing Section 3. The purpose of Section 3 is to ensure that employment, training, contracting, and other economic opportunities generated by certain HUD financial assistance are directed to low- and very low-income persons, particularly those who receive government assistance for housing, and for businesses to provide economic opportunities to low- and very low-income persons. As noted in the summary of this preamble, the regulations for Section 3 have not been updated in over 20 years. HUD's experience in administering Section 3 over time has provided insight as to how HUD could improve the effectiveness of its Section 3 regulations. Additionally, HUD has heard from the public that there is a need for regulatory changes to clarify and simplify the existing requirements. HUD has concluded that regulatory changes are needed to streamline Section 3 and more effectively benefit recipients of HUD financial assistance to achieve the purposes of the Section 3 statute.[1]

Summary of the Major Provisions of This Regulatory Action

The following provides an overview of the more significant provisions of this proposed rule.

Promote Sustained Employment and Career Development

The new rule includes multiple elements designed to increase Section 3's impact in directing employment opportunities for the people served by HUD financial assistance programs and sustaining employment. The new rule proposes the tracking and reporting of

[1] As discussed later in this preamble, this proposed rule would define recipients to mean any entity that receives directly from HUD Section 3 public housing financial assistance or other financial assistance that funds a Section 3 project, including, but not limited to: Any State, local government, instrumentality, Public Housing Authority, Indian tribe, tribal organization, or other public agency, public or private nonprofit organizations.

labor hours instead of new hires and solicits public comment on whether to retain tracking and reporting of new hires in some contexts. The current new hire framework, while valuable for measuring entry into employment, does not capture the extent to which new hiring opportunities are created relative to the total work performed, nor whether those opportunities are sustained over time. The proposed focus on labor hours would measure total actual employment and the proportion of the total employment performed by low- and very low-income workers. In addition, the proposed focus on labor hours emphasizes continued employment. For example, an exclusive focus on counting new hires regards five new hires for one-month opportunities as a more valued outcome than one 12-month opportunity, and it does not distinguish between full- and part-time employment. A full-time job sustained over a long period allows a low- or very low-income worker to gain skills and is a strong indicator of progress towards self-sufficiency. A focus on labor hours ensures that the 12-month, full time opportunity is appropriately recognized. To further encourage employers to invest in and retain newly-hired low- and very low-income workers, the proposed rule would determine whether someone qualified as a Section 3 worker at the time of hire and the employer would continue to count that Section 3 hire even if in the future the Section 3 worker is no longer a low- and very low-income worker.

HUD held a number of listening sessions with small Public Housing Agencies (PHAs), large PHAs, and other entities involved with Section 3 [2] and heard from some PHAs that they would prefer to keep reporting new hires rather than switch to reporting labor hours. Therefore, while HUD believes tracking labor hours is the best option and would simplify reporting, HUD is proposing alternative regulatory language that would provide for PHAs to report on new hires. After receiving feedback on the labor hours and new hires framework in this proposed rule, HUD will select either Alternative 1, labor hours, or Alternative 2, new hires, for PHAs to use in tracking and reporting on Section 3.

Align Section 3 Reporting With Standard Business Practices

As noted above, the new rule proposes the tracking and reporting of labor hours, rather than new hires. This is more consistent with business practices for most construction contractors working on HUD assisted or insured projects, who already track labor hours in their payroll systems because they have been subject to prevailing wage requirements [3] HUD believes a consistent labor hour tracking mechanism will make compliance with Section 3 easier not only for recipients of HUD assistance, but also for contractors and subcontractors. The rule also provides for employers who do not track hours in detail through a time-and-attendance system, permitting a good faith assessment of the labor hours of a full-time or part-time employee. The proposed rule does not create an obligation to establish a detailed time-and-attendance system.

Proposed Applicability and Reporting Thresholds

This proposed rule applies to (1) HUD's Public Housing Program, and (2) Other programs that provide housing and community development assistance. For ease in administration, the rule would provide separate definitions for these types of funding and separate subparts relating to: (1) Public housing financial assistance, which covers (a) development assistance provided pursuant to section 5 of the United States Housing Act of 1937 (the 1937 Act), (b) operations and management assistance provided pursuant to section 9(e) of the 1937 Act (Operating Fund), and (c) development, modernization, and management assistance provided pursuant to section 9(d) of the 1937 Act (Capital Fund); and (2) Section 3 projects, which means HUD program assistance used for housing rehabilitation, housing construction and other public construction projects that generally exceed a $200,000 project threshold or any Section 3 project funding from HUD's Lead Hazard Control and Healthy Homes programs. This proposed rule would clarify that contracts, subcontracts, grants, or subgrants subject to section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5307(b)) or subject to tribal preference requirements as authorized under 101(k) of the Native American Housing Assistance and Self-Determination Act (25 U.S.C. 4111(k)) must provide preferences in employment, training, and business opportunities to Indians and Indian organizations.

All recipients of public housing financial assistance and recipients that fund a Section 3 project would be required to report on whether they have met benchmarks, as explained below. PHAs with fewer than 250 units would only be required to report on Section 3 qualitative efforts and would not be required to report on whether they have met the reporting benchmarks.

Reporting and Targeted Section 3 Workers

HUD's current regulations provide for a safe harbor where recipients may demonstrate compliance with Section 3 by certifying compliance with the Section 3 priorities and meeting numerical goals for the percentage of their new hires that qualify as Section 3 residents. Under the existing regulations, a Section 3 resident is either a public housing resident, or a low- or very low-income person who lives in the metropolitan area or nonmetropolitan county where assistance is expended. However, the Section 3 statute requires recipients of certain financial assistance to target their efforts to direct employment and economic opportunities to specific groups of low- and very low-income individuals. HUD interprets the statutory priorities for the public housing program to be: Residents of the public housing projects for which the public housing financial assistance is expended, residents of other public housing projects managed by the PHA that is expending the assistance or to residents of Section 8-assisted housing managed by the PHA, YouthBuild participants, and then other low- and very low-income persons within the metropolitan area or nonmetropolitan county. For other HUD assistance programs, the statutory priorities are: Residents within the service area or the neighborhood of the project and YouthBuild participants. There is also a statutory contracting priority for businesses that provide economic opportunities for the same priority groups. Previously the contracting metric was based on the cost of the contract awarded to the Section 3 business, and now the hours worked by the Section 3 business employees will be counted consistent with all other reporting.

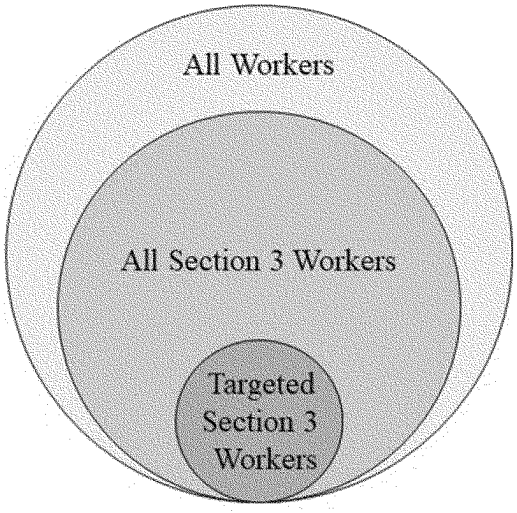
This proposed rule anticipates that recipients would report the labor hours performed by ''Section 3 Workers'' as a percentage of the total labor hours on a project, and labor hours performed by ''Targeted Section 3 Workers'' as a percentage of the total labor hours on a project. The proposed rule would also provide an alternative for public housing financial assistance where

[2] Links [to the listening session notes] will be provided at the time the proposed rule is published.

[3] See 42 U.S.C. 1437j(a), 24 CFR 905.308(b)(3)(ii), 24 CFR 965.101, 25 U.S.C. 4225(b)(1)(A), and 24 CFR 1006.345(b).

reporting would be done by new hires, but with the same three metrics.

Under this proposed rule, ''Section 3 Workers'' would generally be low- or very low-income individuals, or those employed by a business that generally provides economic opportunities for low- and very low-income individuals. This proposed rule creates the new concept of ''Targeted Section 3 Workers'' so that HUD can track, and recipients can target, hiring Section 3 workers in selected categories and those who work for Section 3 businesses. A ''Targeted Section 3 Worker'' is a subset of all Section 3 workers (see graphic), that HUD wishes to specifically track, reflecting both statutory and policy priorities. The Targeted Section 3 worker category also incorporates the statutory requirements pertaining to contracting opportunities for business concerns employing low- and very low-income persons.



Targeted Section 3 Workers for public housing financial assistance would be:

- Residents of public housing projects or Section 8-assisted housing; [4]
- Residents of other projects of the PHA that is expending assistance;
- Current YouthBuild participants; or
- Employees of a Section 3 business.

Targeted Section 3 Workers for other HUD financial assistance used on a Section 3 project would be:

- Low- or very low-income workers residing within the service area or the neighborhood of the project (for purposes of this proposed rule, this would include low- or very low-income workers residing within a one-mile radius of the project site; or if fewer than 5,000 people live within one mile of a work site, within a circle centered on the work site that encompass a population of 5,000 people);
- Current YouthBuild participants; or
- Employees of a Section 3 business concern.

A long-standing criticism of local economic development policy is that spatially-targeted subsidies transfer jobs away from other areas without creating job opportunities for the neediest individuals in the targeted area. The proposed Section 3 regulation avoids this pitfall by encouraging the engagement of local firms and low-income workers through the definition of a targeted Section 3 worker.

Benchmarks

This proposed rule would establish new benchmark measurements, which will also serve as safe harbors. The primary impact of the Section 3 regulation is not to create new jobs but to redirect the job opportunities that are generated by HUD financial assistance to Section 3 workers and Targeted Section 3 workers, and the proposed benchmark would reflect and monitor grantees' abilities to do so. The new benchmarks will be based on ratios of Section 3 workers and Targeted Section 3 workers in comparison to all workers. These benchmarks would be set by notice and amended periodically to provide for updating of benchmarks where warranted. The benchmarks would align with the reporting data detailed above. As HUD gathers increasing data under the new rule, HUD can increase or decrease benchmark figures over time, or tailor different benchmarks for different geographies and different funding types. If a recipient certifies compliance with the statutory priorities and meets the outcome benchmarks, HUD would presume the recipient is in compliance with Section 3 requirements, absent evidence to the contrary. Otherwise, recipients will be required to submit qualitative reports on their efforts, as they are required to do under the current rule when they do not meet the safe harbor, and HUD may conduct monitoring to review the recipient's compliance. Elsewhere in this issue of the **Federal Register**, HUD has published a proposed notification for comment that would set initial benchmarks at the final rule.

Multiple Funding Sources

HUD is seeking to streamline the administrative work for recipients that receive funds through more than one HUD program, and contractors that receive payment from funds under those programs. The rule provides for how to track funding and report benchmarks when there is a project that is funded by public housing financial assistance and also meets the criteria as a Section 3 project. Specifically, that the project must follow the public housing financial assistance requirements for the public housing financial assistance funds and may follow the requirements in subpart B or subpart C for the community development financial assistance funds. It would also provide for how to deal with reporting when a Section 3 project receives housing and community development assistance from two different HUD programs. Specifically, that HUD would designate reporting to one program office.

[4] As further explained in this proposed rule, the term Section 8-assisted housing refers to housing receiving project-based rental assistance or tenant-based assistance under Section 8 of the 1937 Act.

Integrate Section 3 Into Program Enforcement

HUD program office staff are regularly in touch with HUD's funding recipients. Under the proposed rule's framework, HUD's program offices would incorporate Section 3 compliance and oversight into regular program oversight and make Section 3 a more integral part of the program's work. As a result, this proposed rule would eliminate the separate extensive complaint and compliance review procedures in the current rule. Relatedly, it would remove the delegation of authority in the current regulations, as Section 3 requirements, reporting, and compliance would be aligned with those of the applicable HUD program offices.

Costs and Benefits

HUD has prepared a Regulatory Impact Assessment (RIA) that assesses the anticipated costs and benefits of the proposed rule. The purpose of Section 3 is to provide jobs, including apprenticeship opportunities, to public housing residents and other specific low- and very low-income residents of a local area, and contracting opportunities for businesses that substantially employ these persons. However, the Section 3 requirement itself does not create additional jobs or contracts. Instead, Section 3 gives priority for local jobs and contracts created as a result of the expenditure of HUD financial assistance to Section 3 residents and businesses residing and operating in the area in which the HUD financial assistance is expended. A reasonable estimate of the impact of this proposed rule would be a net transfer to Section 3 workers of 3,000 to 14,000 employment opportunities, 2,000 to 4,000 of which would be to Targeted Section 3 workers. In addition, with respect to incomes for tenants of public housing, the Federal rental subsidies provided to those tenants could be reduced as a result of the creation of job opportunities resulting from the expenditure of Federal financial assistance subject to Section 3 requirements.

If implemented as proposed, this proposed rule would result in a reduction in reporting and recordkeeping burden of 64,270 hours and approximately $1.2 million annually. This rule will not have any impact on the level of funding for covered HUD programs. Funding is determined independently by congressional appropriations, authorizing statutes and regulatory formulas that set the amounts of the Federal financial assistance provided by HUD grants. This proposed rule is not an economically significant rule as defined in Executive Order 12866 (Regulatory Planning and Review).

I. Background

Section 3 of the Housing and Urban Development Act of 1968 (Pub. L. 90–448, approved August 1, 1968) (Section 3) was enacted for the purpose of bringing economic opportunities, generated by the expenditure of certain HUD financial assistance, to the greatest extent feasible, to low- and very low-income persons residing in communities where the financial assistance is expended. Section 3 recognizes that HUD funds are often one of the largest sources of Federal funds expended in low- and very low-income communities and, where such funds are spent on activities such as construction and rehabilitation of housing and other public facilities, the expenditure results in economic opportunities. By directing HUD-funded economic opportunities to residents and businesses in the community where the funds are expended, the expenditure can have the double benefit of creating new or rehabilitated housing and other facilities while providing opportunities for employment and training for the residents of these communities. Section 3 was amended by the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992), which required the Secretary of HUD to promulgate regulations to implement Section 3, codified at 12 U.S.C. 1701u. HUD's Section 3 regulations were promulgated through an interim rule published on June 30, 1994, at 59 FR 33880, and the regulations are codified in 24 CFR part 135.

In the 24 years since HUD promulgated the current set of Section 3 regulations, significant legislation has been enacted that affects HUD programs that are subject to the requirements of Section 3 and that are not adequately addressed in the current Section 3 regulations. This legislation includes, but is not limited to, the following: reforms made to HUD's Indian housing programs by the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) (Pub. L. 104–330, approved October 26, 1996); public housing reforms made by the Quality Housing and Work Responsibility Act of 1998 (QHWRA) (Pub. L. 105–276, approved October 21, 1998); reforms made to HUD's supportive housing programs by the Section 202 Supportive Housing for the Elderly Act of 2010 (Pub. L. 111–372, approved January 4, 2011); and the Frank Melville Supportive Housing Investment Act of 2010 (Pub. L. 111–347, approved January 4, 2011).

In 2013, HUD's Office of the Inspector General conducted an audit to assess HUD's oversight of Section 3, in response to concerns about economic opportunities that were provided (or should have been provided) by the expenditure of HUD financial assistance under the American Reinvestment and Recovery Act (Recovery Act) (Pub. L. 111–5, approved February 17, 2009). The audit found that HUD was not fully enforcing the reporting requirements of Section 3 for recipients of Fiscal Year 2009 Recovery Act Public Housing Capital Funds from HUD.[5] In response to the audit and the need to update the outdated regulations, HUD issued a proposed rule on March 27, 2015 entitled ''Creating Economic Opportunities for Low- and Very Low-Income Persons and Eligible Businesses Through Strengthened 'Section 3' Requirements'' which sought to strengthen HUD requirements. See 80 FR 16519. HUD received more than 300 comments on the proposed rule (including duplicate public comments). Comments came from a wide variety of entities, including PHAs, other housing providers, organizations representative of housing providers, governmental jurisdictions and agencies, tenant and other housing advocacy organizations, and individuals. All public comments can be viewed at *http://www.regulations.gov/#!docketDetail;D=HUD-2015-0026.*

While some commenters supported the rule, many commenters were concerned that the proposed rule would raise the bar for compliance and increase administrative requirements without increasing funding. Based on the multitude of comments, HUD sought additional feedback from the public by hosting a number of Section 3 listening sessions[6] to highlight ''best practices'' and to discuss barriers to implementation across the country. The sessions provided valuable information on the challenges and barriers for implementation that HUD hopes to address in this new proposed rule.

II. This Proposed Rule

HUD proposes to revise its Section 3 regulations to better achieve the statute's goals, to make reporting more meaningful and more aligned with statutory requirements, and to simplify

[5] See: *http://www.hudoig.gov/reports-publications/audit-reports/hud-did-not-enforce-reporting-requirements-of-section-3-of.*

[6] See Listening Session Notes at *https://www.hud.gov/program_offices/fair_housing_equal_opp/section_3_publications_and_regulations.*

compliance for recipients. This proposed rule does this by aligning reporting with desired outcomes and with data already collected by reporting entities; clarifying the applicability and scope of the rule; linking certain statutory prioritization categories to a new notice that sets forth benchmarks; streamlining the rule's reporting and oversight requirements; addressing complexities arising from the use of multiple funding sources; simplifying the requirements for Section 3 contract language; and aligning Section 3 requirements more closely with specific HUD program requirements.

This rule would remove existing Section 3 regulations in 24 CFR part 135 and create a new part 75, which would be organized into four subparts: Subpart A—General Provisions; Subpart B—Additional Provisions for Public Housing Financial Assistance; Subpart C—Additional Provisions for Section 3 projects; and Subpart D—Provisions for Multiple funding sources, recordkeeping and compliance. Subparts A and D apply to all recipients, subrecipients, contractors, and subcontractors subject to Section 3 requirements. Subpart B provides requirements specific to PHAs and other recipients of public housing financial assistance. Subpart C mostly mirrors subpart B, but provides specific requirements for recipients using funds on a Section 3 project. Part 75 would be codified in a section of HUD's CFR that establish requirements that generally apply to HUD's programs.

Throughout this rule, the reader will find amendatory language titled ''Alternative 1'' and ''Alternative 2.'' As discussed above, HUD is providing the opportunity for PHAs and other recipients of public housing financial assistance to view the new rule and provide feedback on whether HUD should track labor hours, consistent with what HUD is proposing for Section 3 projects, or maintain the tracking of new hires. The language in ''Alternative 1'' is what HUD would adopt if the final rule tracks labor hours for all public housing financial assistance and the language in ''Alternative 2'' is what HUD would adopt if the final rule provides separate tracking and reporting of public housing financial assistance by new hires. At the final rule stage, HUD will decide on either ''Alternative 1'' or ''Alternative 2,'' and maintain only one set of regulatory changes and the definitions that apply.

HUD notes that nothing in this proposed rule would supersede the general requirement of 2 CFR 200.319(a) that all procurement transactions be conducted in a competitive manner. In addition, HUD notes that 2 CFR 200.319(b) permits geographical preferences where applicable Federal statutes expressly mandate or encourage geographic preference, such as Section 3.

Subpart A—General Provisions

Subpart A—General Provisions contains four sections: The general purpose of Section 3 (§ 75.1); the applicability of Section 3 requirements on HUD federal assistance (§ 75.3); new and updated definitions applicable to this part (§ 75.5); and the Section 3 requirements applicable to HUD's notices of funding availability (NOFAs) (§ 75.7).

Section 75.1 provides the framework for the regulation and sets forth the purpose of Section 3, which is to ensure that economic opportunities, most importantly employment, generated by certain HUD financial assistance for housing and community development programs shall be directed to low- and very low-income persons. Following the Section 3 statute, this section provides an emphasis on providing opportunities for those who are recipients of Federal financial assistance for housing or residents of the community in which the Federal financial assistance is spent.

Section 75.3 defines the application of Section 3 consistent with the Section 3 statute. There are two categories:

(1) Public housing financial assistance: This term covers the public housing program assistance which includes: (a) Development assistance provided pursuant to section 5 of the United States Housing Act of 1937; (b) operations and management assistance provided pursuant to section 9(e) of the 1937 Act (Operating Fund) and (c) development, modernization, and management assistance provided pursuant to section 9(d) of the 1937 Act (Capital Fund). While the statute also includes a reference to modernization assistance pursuant to section 14 of the Act, which was repealed by the Quality Housing and Work Responsibility Act of 1998 (QHWARA) (Pub. L. 105–276), the former section 14 modernization program was replaced along with the operating, maintenance, development and modernization programs that became the Operating Fund and Capital Fund programs with assistance provided pursuant to section 9. The Section 8 programs were never included in the Section 3 statute and will not be covered in this proposed rule despite being included in the current Section 3 rule.

(2) Section 3 project: This term covers assistance provided by other HUD programs when used for housing rehabilitation, housing construction, and other public construction projects, as described in 12 U.S.C. 1701u(c)(2). A Section 3 project will mean a housing rehabilitation, housing construction, and other public construction projects where the HUD assistance exceeds $200,000, and all projects that receive funding from HUD's Lead Hazard Control and Healthy Homes programs.

The proposed rule's threshold applies on a project basis. HUD proposes using project funding level to define thresholds because the amount of funding spent on the project is directly related to the economic opportunities generated by the project.

HUD arrived at the $200,000 threshold after analyzing data from relevant programs, including HUD's Community Development Block Grant (CDBG) and HOME Investment Partnerships (HOME) programs. HUD considered various thresholds in deciding to propose the $200,000 figure. HUD estimates that of $100,000 in construction spending, $64,000 generally goes to labor costs, and the median annual income for a construction job is $44,730. Thus, a project below $100,000 would not generate more than one salary. On the other hand, HUD data shows that a higher threshold, such as $400,000, could exempt a large portion of housing and community development projects from Section 3 funding. Fiscal year 2015 CDBG data shows that a $400,000 threshold would have exempted 90 percent of construction and rehabilitation activities, and over half of CDBG assistance. A $200,000 threshold would still cover almost three-quarters of CDBG funding, while exempting the smallest three quarters of projects and eliminating administrative burdens from these small efforts that yield relatively few employment opportunities. For the HOME program, at least 90% of HOME funding to projects greater than 1 unit would be covered by any threshold at $400,000 or below. It is HUD's view that $200,000 is a sufficiently high amount that, when expended on construction-related activities, a significant amount of those funds should be used to generate economic opportunities for low- and very low-income persons. An exception applies for lead hazard control and healthy homes mitigation activities, which on a per unit remediation basis would generally involve much less than $100,000 in HUD grant funds, and so applying a per project threshold could effectively exempt lead hazard control and healthy homes grants from Section 3. As a result, this rule proposes to apply Section 3 requirements to all projects

that receive funds from HUD's Lead Hazard Control and Healthy Homes grant programs consistent with the current application of Section 3 to all grants above $100,000.

Section 75.3 provides that requirements of this part apply to the entire Section 3 project, regardless of whether the project is fully or partially funded with HUD program assistance.

This section also clarifies that Section 3 does not apply to material supply contracts. As discussed in this preamble, a material supply contract is defined as a contract for the delivery of commercially available materials and products. The proposed rule includes a set of examples to illustrate what is meant by commercially available materials for purchase, such as lumber, drywall, wiring, concrete, pipes, toilets, sinks, carpets, and office supplies. In most cases a material supply contract will include the delivery of the materials and in those cases the delivery is also not subject to Section 3 requirements. However, when a recipient enters into a separate delivery contract for an order of material supplies, that delivery contract would be subject to Section 3 requirements.

The proposed rule also provides that contracts, subcontracts, grants, or subgrants subject to section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5307(b)) or subject to tribal preference as authorized under 101(k) of the Native American Housing Assistance and Self-Determination Act (25 U.S.C. 4111(k)) are not subject to the requirements in this part because they must provide preferences in employment, training, and business opportunities to Indians and Indian organizations. Lastly, § 75.3 indicates that HUD encourages recipients of HUD assistance not covered by Section 3 to support the objectives of Section 3.

Section 75.5 provides the definitions used throughout the new part. The section proposes to use the general HUD definitions at 24 CFR part 5 for HUD, Public Housing, and PHAs and defines Section 3 by reference to section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u). The proposed rule also includes several definitions for clarity including: ''1937 Act;'' ''Public housing project;'' ''Low-income person;'' ''Qualified Census Tract;'' ''Section 8-assisted housing;'' ''Very low-income person;'' and ''YouthBuild programs.''

HUD proposes contract terms for determining coverage of the rule:

Material supply contracts would be defined as a contract that is made for the purchase of products and materials. HUD provides this definition to clarify that such contracts are not covered by Section 3.

Professional services would be defined as non-construction services, including, but not limited to, contracts for legal services, financial consulting, accounting services, environmental assessment, architectural services, and civil engineering services. This definition is informed by the current separation of Section 3 business concern ratios by building trade versus non-building trade. Professional services will be excluded from the benchmarking requirements, but HUD will allow voluntary reporting of these workers, as discussed below.

HUD also provides definitions for purposes of the new Section 3 reporting requirements:

Contractor would be defined as an entity entering into a contract with a recipient to perform work in connection with the expenditure of public housing financial assistance or for work in connection with a Section 3 project, or a subrecipient for work in connection with a Section 3 project.

Labor hours would be defined to mean the number of paid hours worked by persons on Section 3 projects or employed with funds that include public housing financial assistance. This includes the labor hours of any contractor, subcontractor, or employee of the public housing authority that is being paid in part by the public housing financial assistance. For example, the labor hours performed by an elevator maintenance contractor under a contract with the PHA would be included in the total labor hours performed by the PHA using public housing financial assistance.

New hire would be defined as a full- or part-time employee for permanent, temporary, or seasonal employment opportunities that was not on the payroll of the recipient, or of a recipient's contractor or subcontractor or other entity receiving public housing financial assistance at the beginning of the award. The term also includes a new hire that was hired by a contractor or subcontractor on a per-project basis as a result of receiving public housing financial assistance. This definition is part of Alternative 2 for PHAs to consider in determining if reporting should be completed using labor hours or new hires. If Alternative 1, which uses labor hours for reporting, is chosen, this definition will not be included at the final rule.

Public housing project is defined in 24 CFR 905.108.

Recipient would be defined to mean any entity that receives directly from HUD Section 3 public housing financial assistance or other financial assistance that funds a Section 3 project, including, but not limited to: Any State, local government, instrumentality, PHA, Indian tribe, tribal organization, or other public agency, public or private nonprofit organization. This term excludes the ultimate beneficiary of Federal financial assistance under the HUD program to which Section 3 applies (for example an individual or family receiving a housing rehabilitation grant financed with HOME assistance) and does not include contractors and subcontractors. This term establishes the scope of entities that would be required to report to HUD under this proposed rule. It also defines the entities subject to the requirement to include contractual language requiring the application of Section 3 (See §§ 75.17 and 75.27.).

Small PHA would be defined to mean a public housing authority with fewer than 250 public housing units. This definition allows for these smaller entities to follow a reduced reporting process under § 75.13. This definition is consistent with references to small PHAs in 24 CFR parts 902, 903, 905, 970, and 985.

Subcontractor would mean any entity that has a contract with a contractor to undertake a portion of the contractor's obligation to perform work in connection with the expenditure of public housing financial assistance or a Section 3 project.

Subrecipient would be defined to have the meaning provided in the applicable program regulations, or in 2 CFR 200.93.

Finally, this regulation would propose definitions for a Section 3 business concern, Section 3 worker, and Targeted Section 3 worker for purpose of benchmarking:

Section 3 business concern would be defined to mean a business that is at least 51 percent owned by low- or very low-income persons; over 75 percent of the labor hours performed for the business are performed by low- or very low-income persons; or is at least 25 percent owned by current public housing residents or residents who currently live in Section 8-assisted housing. The Section 3 statute defines a business concern that provides economic opportunities to mean a business concern ''that—(A) provides economic opportunities for a class of persons that has a majority controlling interest in the business; (B) employs a substantial number of such persons; or (C) meets such other criteria as the Secretary may establish.'' The proposed definition reflects the first two statutory

requirements and provides two additional types of business concerns that meet the statutory intent. HUD believes that the 75 percent figure is a reasonable measure for determining whether the business concern provides economic opportunities for a substantial number of low- and very low-income persons. Lastly, to further encourage businesses ownership by public housing residents or residents who live in Section 8-assisted housing, this proposed rule would provide that a Section 3 business concern could be one that is at least 25 percent owned by current public housing residents or residents who currently live in Section 8-assisted housing. HUD also notes that a prior arrest or conviction generally does not impact an individual's status as an owner of a Section 3 business and that meeting the definition of a Section 3 business does not negate the requirement that the business meet the specifications of the particular contract (*e.g.,* construction, supplies, etc.). However, the requirements for preventing crime in federally assisted housing (denying admission and terminating tenancy for criminal activity or alcohol abuse) in subpart I of 24 CFR part 5 continue to apply to Section 3. Accordingly, subpart I will apply to applicants or tenants who would be under consideration as an owner of a Section 3 business.

Section 3 worker would be defined to mean a worker whose income, before being hired to work on the project, is below the income limit established by HUD; a worker who lives in a qualified census tract; or a worker who is employed by a Section 3 business concern. The program statutes and regulations provide the basis for the income limit for determining eligibility for assisted housing programs, including the Public Housing, Section 8 project-based, Section 8 Housing Choice Voucher, Section 202 Housing for the Elderly, and Section 811 Housing for Persons with Disabilities programs. HUD annually establishes income limits based on Median Family Income estimates and Fair Market Rent area definitions for each metropolitan area, parts of some metropolitan areas, and each non-metropolitan county. The income limits are available at: *https://www.huduser.gov/portal/datasets/il.html.*

HUD would define qualified census tract as any census tract (or equivalent geographic area defined by the Bureau of the Census) in which at least 50 percent of households have an income of less than 60 percent of Area Median Gross Income (AMGI); or where the poverty rate is at least 25 percent and where the census tract is designated as a qualified census tract by HUD. Qualified census tract data can be found here: *https://www.huduser.gov/portal/datasets/qct.html.* The definition of Section 3 worker would provide that an individual's prior arrest or conviction shall not negatively impact that individual's status as a Section 3 worker and that meeting the definition of a Section 3 worker does not negate the requirement that the individual be qualified for the job. However, the requirements for preventing crime in federally assisted housing (denying admission and terminating tenancy for criminal activity or alcohol abuse) in subpart I of 24 CFR part 5 continue to apply to individuals identified as Section 3 workers or as owners of a Section 3 business.

Targeted Section 3 worker would be defined as provided in § 75.11 for the public housing financial assistance and as provided in § 75.19 for a Section 3 project. For certain projects receiving funding from multiple sources, the definition is provided in § 75.29.

Section 75.7 would establish requirements applicable to HUD's NOFAs for public housing financial assistance and Section 3 projects. HUD would require that all NOFAs that award funds covered by Section 3 will include notice that the assistance is subject to part 75. This section would also provide that HUD may include, where appropriate, points or bonus points for exceeding Section 3 requirements. This proposed rule would remove the requirements in the currently codified part 135 that require NOFA applicants to submit certifications that the applicant will comply with the Section 3 requirements, require a statement of activities intended by recipients of assistance covered by Section 3, and require that the NOFA give preference for Section 3 requirements. HUD's removal of these requirements is consistent with how HUD implements other applicable program requirements. Further, these additional burdens are unnecessary as recipients already agree to comply with all applicable program requirements, including Section 3 requirements, when they submit a NOFA.

Subpart B—Additional Provisions for Public Housing Financial Assistance

Subpart B—Additional Provisions for Public Housing Financial Assistance contains five sections, which set out the requirements for PHAs and other recipients of public housing financial assistance, as defined in § 75.3. The subpart includes the following: Requirements (§ 75.9); Targeted Section 3 worker definition for public housing financial assistance (§ 75.11); Section 3 safe harbor (§ 75.13); Reporting (§ 75.15); and Contract Provisions (§ 75.17).

Section 75.9 would incorporate the statutory Section 3 requirements for prioritizing categories of Section 3 workers and businesses when using public housing financial assistance defined in § 75.3(a)(1). The statutory prioritization requires that a PHA or other recipient of public housing financial assistance must make its best efforts, consistent with existing Federal, state, and local laws and regulations, to provide employment and training opportunities generated by the public housing financial assistance to Section 3 workers in the following priority order:

(1) To residents of the public housing projects for which the public housing financial assistance is expended;

(2) To residents of other public housing projects managed by the PHA that is expending assistance or to residents of other Section 8-assisted housing managed by the PHA;

(3) To participants in YouthBuild programs; and

(4) To low- and very low-income persons residing within the metropolitan area (or nonmetropolitan county) in which the assistance is expended.

The Section 3 statute also requires that a PHA or other recipient of public housing financial assistance must make its best efforts to award contracts and subcontracts to business concerns that provide economic opportunities to Section 3 workers in the following priority order:

(1) To Section 3 business concerns that provide economic opportunities for residents of the public housing projects for which the assistance is provided;

(2) To Section 3 business concerns that provide economic opportunities for residents of other public housing projects managed by the PHA that is providing the assistance or for residents of Section 8-assisted housing managed by the PHA;

(3) To YouthBuild programs; and

(4) To Section 3 business concerns that provide economic opportunities for Section 3 workers residing within the metropolitan area (or nonmetropolitan county) in which the assistance is provided.

Section 75.11 would establish the definition of a ''Targeted Section 3 worker'' for PHAs and other recipients of public housing financial assistance. This definition is used for reporting and tracking by HUD and to ensure that PHAs and other recipients use their best

efforts to provide employment opportunities to the categories of workers in certain priority categories established by the Section 3 statute, as well as to all residents of public housing projects or Section 8-assisted housing, and to workers employed by Section 3 business concerns. The definition of a ''Targeted Section 3 worker'' for subpart B has an Alternative 1 definition and Alternative 2 definition to reflect the option of reporting labor hour or new hires.

Alternative 1: Would provide that a Targeted Section 3 worker for subpart B is a worker employed by a Section 3 business concern, or a worker who currently is or who was when hired by the worker's current employer a resident in a public housing project or Section 8-assisted housing; a resident of other projects managed by the PHA that is expending assistance; or a current YouthBuild participant.

Alternative 2: Would provide that a Targeted Section 3 worker for subpart B is a new hire employed by a Section 3 business concern, or a new hire employed by the worker's current employer who is also a resident in a public housing project or Section 8-assisted housing; a resident of other projects managed by the PHA that is expending assistance; or a current YouthBuild participant.

In both alternatives, the definition focuses on certain targeted categories for public housing financial assistance. Additionally, the definition includes all employees of a Section 3 business concern to recognize the statutory requirement for recipients to make best efforts to award contracts to Section 3 business concerns. The definition also includes all residents of public housing projects, as well as residents receiving project-based or tenant-based Section 8 assistance, and YouthBuild participants combining these categories allows for a single, streamlined outcome metric (labor hours) that reflects both the employment and contracting components of the Section 3 statute, as well as HUD's desire to incentivize the employment of all residents who live in public housing or receive Section 8 assistance, and also in the YouthBuild program.

The Targeted Section 3 worker concept is consistent with the goals of expanding employment opportunities for particular individuals that receive federal assistance for housing and of expanding subcontracting opportunities for businesses that are owned by or substantially employ such persons.

The first alternative focuses on labor hours and includes current employees and those recently hired by the employer. HUD believes that counting labor hours for employees who are already employed and qualify as a Targeted Section 3 worker ensures that such workers have continued long-term employment. HUD has also heard from stakeholders that some employers may fire and re-hire people, hire people for very short-term jobs, and engage in other maneuvering to meet the Section 3 requirements. HUD believes counting labor hours is consistent with the statute and mitigates contractors' ability to manipulate their Section 3 outcomes.

Section 75.13 would provide PHAs and other recipients a safe harbor provided they certify to following the prioritization in § 75.9 and meet or exceed the Section 3 benchmarks that HUD will prescribe through notice. The safe harbor proposed by this rule, like the safe harbor provided by the currently codified rule, would allow for recipients that meet this standard to be free from additional Section 3 reporting. However, this proposed rule also provides that the safe harbor exists only to the extent that no evidence to the contrary is presented to HUD, and that meeting the safe harbor does not exempt PHAs and other recipients of public housing financial assistance from maintaining records of compliance for general program review. See §§ 75.31 and 75.33.

This section would also set forth the process of establishing benchmarks. HUD proposes to establish Section 3 benchmarks for Section 3 workers, Targeted Section 3 workers, or both through a document published in the **Federal Register**. The rule would provide that HUD may establish a single nationwide benchmark or may establish multiple benchmarks based on geography, the type of public housing financial assistance, or other variables. When establishing the Section 3 benchmarks, HUD would consider the industry averages worked by specific categories of workers or in different localities or regions; data reported by PHAs or other recipients of public housing financial assistance pursuant to this section; and any other factors HUD deems important. In establishing the Section 3 benchmarks, HUD would exclude professional service contracts from the benchmark ratios. HUD plans to update the benchmarks through a document published in the **Federal Register**, subject to public comment, not less frequently than once every three years. Providing the benchmark through **Federal Register** notice would allow HUD to revise the benchmarks where warranted in response to the data HUD gathers and based on feedback HUD receives from recipients. Over time, the benchmarks can become more tailored and a more reliable indicator for when enforcement efforts should be undertaken, giving the safe harbors more value and creating a greater incentive for recipients, contractors, and subcontractors to exceed the safe harbors. Section 3 benchmarks will consist of the following ratios:

Alternative 1: (1) The number of labor hours worked by Section 3 workers divided by the total number of labor hours worked by all workers employed with public housing financial assistance in the PHA's fiscal year; (2) the number of labor hours worked by Targeted Section 3 workers, as defined in § 75.11(a)[7] divided by the total number of labor hours worked by all workers employed with public housing financial assistance in the PHA's fiscal year; or (3) ratios for both (1) and (2).

Alternative 2: (1) The number of new hires that are Section 3 workers divided by the total number of new hires employed with public housing financial assistance in the PHA's fiscal year; or (2) the number of new hires that are Targeted Section 3 workers, as defined in § 75.11(a),[8] divided by the total number of new hires employed with public housing financial assistance in the PHA's fiscal year; or (3) ratios for both (1) and (2).

Section 75.15 proposes the process for PHAs and other recipients of public housing financial assistance to report to HUD on the data for the benchmarks. Specifically, it requires that the following be reported:

Alternative 1: The total number of total labor hours worked with the public housing financial assistance, labor hours worked by Section 3 workers, and labor hours worked by Targeted Section 3 workers. However, the rule would provide a limited exception where PHAs and other recipients of public housing financial assistance could use the reporting of a good faith assessment of the labor hours of a full-time or part-time employee from contractors and subcontractors that have not been subject to requirements specifying time and attendance reporting, and do not have systems already in place to track labor hours. This small carve-out provides a limited exception for recipients to report on the labor hours from contractors and subcontractors that do not already track labor hours without necessitating any change in time and attendance or payroll systems for the reporting contractors and subcontractors. However, it is not a permanent exemption and if in the

[7] This refers to § 75.11(a) Alternative 1.

[8] This refers to § 75.11(a) Alternative 2.

future the contractor or subcontractor is required to track labor hours pursuant to some other authority, or begins to voluntarily track labor hours, the exception would no longer apply.

Alternative 2: The total number of new hires with public housing financial assistance, total number of new hires that are Section 3 workers, and total number of new hires that are Targeted Section 3 workers.

Both Alternative 1 and Alternative 2 would provide that reporting may, but is not required to, include professional service jobs. Given the challenges HUD has heard in hiring Section 3 workers and Targeted Section 3 workers in professional service jobs, HUD has decided not to include those jobs in its benchmark ratio and instead proposes to make the reporting of professional services jobs voluntary. Therefore, if a PHA, other recipient of public housing financial assistance, contractor, or subcontractor has professional service employees that are Section 3 workers and Targeted Section 3 workers, the PHA or other recipient of public housing financial assistance may report on those jobs and count them to increase their total numbers. By including labor hours for professional services work in the numerators of these calculations (*i.e.,* labor hours for the Section 3 workers and Targeted Section 3 workers), but not in the denominators (*i.e.,* all labor hours worked), HUD is also recognizing the value of this more challenging effort to create opportunities in the professional services context.

Section 75.15 would provide that small PHAs will not be required to report the number of labor hours or new hires. Small PHAs would instead be required to report their qualitative efforts. PHAs and other recipients of public housing financial assistance that do not meet the Section 3 benchmarks described in § 75.11 would also have to provide reports on their qualitative efforts. HUD is considering some of the following to signify qualitative efforts: Outreach efforts to generate job applicants who are Targeted Section 3 workers; direct on-the-job training (including apprenticeships); indirect training such as arranging for, contracting for, or paying tuition for, off-site training technical assistance to help Section 3 workers; and outreach efforts to identify and secure bids from Section 3 business concerns. HUD plans to create a form for tracking and reporting qualitative efforts, to ease burden on recipients.

All reporting either under the general reporting framework or the qualitative reporting requirement would be on an annual basis and reported to HUD in a manner consistent with reporting requirements for the applicable HUD program. HUD believes that requiring reporting annually, but consistent with timeframes that PHAs and other recipients of public housing financial assistance are already using to submit documents to HUD, will relieve existing burden. For example, when an annual plan is completed for a PHA the Section 3 reporting would be done at that time or when a recipient of public housing financial assistance must submit an annual report. HUD is also looking to include reporting into existing systems rather than requiring PHAs and other recipients to log into and report under a separate system, such as HUD's existing Section 3 Performance Evaluation and Registration System (SPEARS).

Section 75.17 would establish requirements for PHAs and other recipients of public housing financial assistance to include language referencing Section 3 in contracts that are subject to Section 3. The proposed rule would provide that PHAs and other recipients of public housing financial assistance include contractual language applying Section 3 to any contractor. PHAs and other recipients of public housing financial assistance would also require that contractors include contractual language applying Section 3 to any subcontract. Lastly, the section would provide that regardless of whether Section 3 language exists in a contract, PHAs and other recipients of public housing financial assistance must ensure the contractors and subcontractors are in compliance with § 75.9. As distinguished from currently codified § 135.38, this proposed rule would not codify the exact contractual language that PHAs and other recipients of public housing financial assistance must include and would no longer require the use of this contract provision below the initial subcontract level. HUD believes this will reduce regulatory burdens. This change does not, however, limit the requirement that public housing financial assistance is used consistent with the statutory requirements in § 75.9.

Subpart C—Additional Provisions for Section 3 Projects

Subpart C—Additional Provisions for Section 3 Projects sets out the requirements for recipients working on a Section 3 project, as defined in § 75.3. The sections include: Requirements (§ 75.19); Targeted Section 3 worker definition for Section 3 projects (§ 75.21); Section 3 safe harbor (§ 75.23); Reporting (§ 75.25); and Contract Provisions (§ 75.27).

Section 75.19 would incorporate the statutory Section 3 requirements for prioritizing categories of Section 3 workers and businesses under other HUD funds that are used for Section 3 projects, as defined in § 75.3(a)(2). The statutory prioritization ensures that employment and training opportunities arising in connection with Section 3 projects are provided, consistent with existing Federal, state and local laws and regulations, to Section 3 workers within the metropolitan area (or nonmetropolitan county) in which the project is located to the greatest extent feasible to these following groups:

(1) Section 3 workers residing within the service area or the neighborhood of the project; and

(2) To participants in YouthBuild programs.

The Section 3 statute also requires that to the greatest extent feasible contracts and subcontracts awarded in connection with Section 3 projects are provided to Section 3 business concerns that provide economic opportunities to Section 3 workers residing within the metropolitan area (or nonmetropolitan county) in which the project is located. Those efforts should be directed as follows:

(1) Section 3 Business concerns that provide economic opportunities for Section 3 workers residing within the service area or the neighborhood of the project; and

(2) YouthBuild programs.

For the purposes of Section 3 only, HUD would define ''Service area or the neighborhood of the project'' to mean an area within 1 mile of the Section 3 project or, if fewer than 5,000 people live within one mile of a Section 3 project, within a circle centered on the Section 3 project that is sufficient to encompass a population of 5,000 people according to the most recent U.S. Census. HUD notes above that consistent with existing Federal regulations, Federal procurement requirements at 2 CFR 200.319(a) must continue to be followed, as discussed above.

Section 75.21 would define a ''Targeted Section 3 worker'' for Section 3 projects. This definition would be used for reporting and tracking by HUD so that recipients will focus on reaching the priority workers in the statute and workers employed by Section 3 business concerns. HUD would define a ''Targeted Section 3 worker'' for subpart C as a worker employed by a Section 3 business concern, or a worker who is or was when hired by the worker's current employer: (1) A Section 3 worker living

within the service area or the neighborhood of the project, as this term is described in § 75.5; or (2) a current YouthBuild participant. As with the definition of ''Targeted Section 3 worker'' for PHAs and other recipients of public housing financial assistance, this definition would include current YouthBuild participants. Additionally, all employees of Section 3 business concerns would be considered Targeted Section 3 workers to recognize the statutory requirements to award contracts to Section 3 business concerns, to the greatest extent feasible, while providing for a single, streamlined outcome metric (labor hours) that reflects both the employment and contracting components of the Section 3 statute.

HUD believes counting individuals who live within one mile of the worksite or within a circle centered around the worksite that encompasses 5,000 people provides a definitive means of determining who counts as a Targeted Section 3 worker within the service area or the neighborhood of the project. HUD proposes to use this 5,000-person figure because HUD examined current CPD projects and determined that most (77%) had a population of 5,000 people within one mile of the project site, and the median project had 4,627 potential Targeted Section 3 workers. Further, an individual could live across the street from a project and be differently affected by development activities, and still not be considered to be living in the same ''neighborhood'' as a project because of how the jurisdiction's neighborhood boundaries are drawn. HUD plans to create and provide at the issuance of a final rule a web tool for recipients, subrecipients, contractors, and subcontractors that will help in determining the geographic area that encompasses Targeted Section 3 workers under this definition. The discussion in subpart B of this preamble pertaining to the YouthBuild program and participants applies for subpart C as well.

Section 75.23 would provide a recipient undertaking a Section 3 project a safe harbor provided the recipient certifies to following the prioritization in § 75.19 and meets or exceeds the Section 3 benchmarks that HUD will prescribe through notice. The safe harbor proposed by this rule, like the safe harbor provided by the currently codified rule, would allow for recipients that meet this standard to be free from additional Section 3 reporting. However, this proposed rule provides that the safe harbor exists only to the extent that no evidence to the contrary is presented to HUD, and that meeting the safe harbor does not exempt recipients from maintaining records of compliance for general program review. See §§ 75.31 and 75.33.

This section would also establish the process of establishing benchmarks, consistent with subpart B. Similar to the process for establishing the benchmarks for public housing financial assistance under subpart B, HUD proposes to establish Section 3 benchmarks for Section 3 workers, Targeted Section 3 workers, or both through a document published in the **Federal Register**.

Section 75.25 would provide the reporting requirements for Section 3 projects by recipients to HUD for the benchmarks. Specifically, § 75.25 would require that the total number of total labor hours, labor hours worked by Section 3 workers, and labor hours worked by Targeted Section 3 workers on a Section 3 project be reported to HUD. However, the rule would provide a limited exception for recipients, and for subrecipients, contractors, and subcontractors that report up to recipients, that are not subject to requirements specifying time and attendance reporting. The rule does not require any change in the time and attendance, or payroll systems used by recipients, subrecipients, contractors, or subcontractors. Where labor hours of a full-time or part-time employee are not already tracked, this proposed rule would allow the recipient to report labor hours of those employees based on a good faith assessment. This small carve-out would apply in a limited situation and was created not to increase burden on recipients, subrecipients, contractors, and subcontractors that are not tracking labor hours. However, if in the future the recipient, subrecipient, contractor, or subcontractor is required to track labor hours, or does so voluntarily, the exception would no longer apply. This section also, consistent with § 75.15 in subpart B, would provide that Section 3 project recipients may, but are not required to, report professional service jobs. Therefore, if a Section 3 project has labor hours for professional service employees that are Section 3 workers and Targeted Section 3 workers, the recipient may, but is not required to, report on those jobs and count them to increase their total numbers. By including labor hours for professional services work in the numerators of these calculations (*i.e.,* labor hours for the Section 3 workers and Targeted Section 3 workers), but not in the denominators (*i.e.,* all labor hours worked), HUD is also recognizing the value of this more challenging effort to create opportunities in the professional services context.

Section 75.25 would also provide that a recipient that does not meet the Section 3 benchmarks described in § 75.21 would be required to report on its qualitative efforts. HUD is considering some of the following to signify qualitative efforts: Outreach efforts to generate job applicants who are Targeted Section 3 workers; direct on-the job training (including apprenticeships); indirect training such as arranging for, contracting for, or paying tuition for, off-site training technical assistance to help Section 3 workers; and outreach efforts to identify and secure bids from Section 3 business concerns. HUD plans to provide a form for ease in reporting qualitative reporting. All reporting either under the general reporting framework or the qualitative reporting requirement must be submitted annually to HUD in a manner consistent with reporting requirements for the applicable HUD program. As discussed in this preamble, HUD believes that requiring reporting consistent with existing reports will decrease administrative burden on recipients, and HUD will continue to look for ways to streamline reporting in other ways, such as using existing program-specific reporting systems. The proposed rule further allows projects to be reported on a project-by-project basis, with each annual report reflecting projects completed within the reporting year.

Section 75.27 would establish contract requirements for Section 3 project recipients. Specifically, the proposed rule would require that a recipient of a Section 3 project include language applying Section 3 to any subrecipient agreement, program regulatory agreement, or contract for a Section 3 project. The proposed rule would also require that recipients of Section 3 projects ensure that subrecipients, contractors, and subcontractors meet the requirements in § 75.19. As noted in this preamble, HUD is not codifying the language that recipients and contractors working on Section 3 projects are required to include in subrecipient agreements and subcontracts and is limiting the requirement to include language only to the contract level. HUD believes these changes will reduce the burden on the regulated entity, but HUD notes that it does not change the requirement that Section 3 project hiring must be consistent with the statutory requirements in § 75.19.

Subpart D—Provisions for Multiple Funding Sources, Recordkeeping, and Compliance

Subpart D sets out the requirements for recipients of multiple types of HUD financial assistance subject to Section 3. The sections include compliance requirement for recipients when in receipt of multiple funding sources (§ 75.29); recordkeeping requirements (§ 75.31); and compliance requirements (§ 75.33).

Section 75.29 would provide requirements for recipients to follow when in receipt of multiple funding sources. Section 75.29(a) would provide that if a housing rehabilitation, housing construction, or other public construction project is subject to Section 3 requirements pursuant to both § 75.3, paragraphs (a)(1) and (2), the recipient must follow subpart B of this proposed rule for the public housing financial assistance funds and may follow either subpart B or subpart C for the housing and community development financial assistance funds. For example, when a PHA receives public housing financial assistance and a community development block grant for a project to build a playground, the PHA can follow either option in paragraph (a) for the community development block grant funds to comply with Section 3 requirements. For the funding under § 75.3(a)(2), a Targeted Section 3 worker is any worker who meets the definition of a Targeted Section 3 worker in either subpart B or subpart C of this part. As with other sections in the rule, § 75.29 provides two different alternatives depending on whether PHAs will be required in a final rule to report using labor hours or new hires. If the final rule provides for the use of new hires for public housing financial assistance, when multiple funding sources are used PHAs would be required to report both labor hours and new hires.

The section also proposes in paragraph (b) that if a housing rehabilitation, housing construction, or other public construction project is subject to Section 3 pursuant to multiple housing and community development financial assistance programs, the recipient or recipients must follow subpart C of this part and report to one HUD program office, as prescribed by HUD. This section will make the application of Section 3 requirements easier for recipients that work with multiple funding sources and ease reporting burden. For example, when CDBG funds and a Lead Hazard Control grant are combined, the recipients would follow the paragraph (b) requirements to comply with Section 3 requirements. In this case, HUD would designate reporting to only one program office.

Section 75.31 would require that HUD be provided access to records, reports, and other documents or items that are maintained to demonstrate compliance with the requirements of this part, or that are maintained in accordance with the regulations governing the specific HUD program. This section also provides directions on what documentation must be maintained for Section 3 workers and Targeted Section 3 workers. For a Section 3 worker, the recipient would be required to maintain certification, or ensure that a subrecipient, contractor, or subcontractor that employs the worker maintains certification that the worker either meets the income limit established by HUD, the worker participates in a means-tested program such as public housing or Section-8 assisted housing, that the worker's residency is in a qualified census tract or that the worker is employed by a Section 3 business.

For a Targeted Section 3 worker, the recipient subject to subpart B must maintain certification, or ensure that a contractor or subcontractor that employs the worker maintains certification that the worker resides in public housing or Section-8 assisted housing or the worker is employed by a Section 3 business. A third option under Alternative 1 and 2 is a certification that the employee is a YouthBuild participant.

For a Targeted Section 3 worker, the recipient subject to subpart C would be required to maintain a certification, or ensure that a subrecipient, contractor, or subcontractor that employs the worker maintains certification that the worker's residence is within 1 mile of the work site or, if fewer than 5,000 people live within 1 mile of a work site, within a circle centered on the work site that is sufficient to encompass a population of 5,000 people according to the most recent U.S. Census; that the worker is employed by a Section 3 business; or that the worker is a YouthBuild participant. This section also requires that documentation is maintained for the time period required for record retentions in accordance with applicable program regulations, or in the absence of applicable program regulations, 2 CFR part 200.

Section 75.33 proposes the compliance requirements for recipients. It would require that records demonstrating compliance be maintained and provides that HUD would conduct compliance and enforcement actions in conjunction with normal program oversight. It also notes that complaints alleging failure of compliance with part 75 may be reported to the HUD program office responsible for the public housing financial assistance or Section 3 project. HUD believes that the Section 3 requirements should be handled consistent with other program requirements that a recipient is subject to when accepting HUD funds. As result, this proposed rule provides that while HUD would monitor compliance with the requirements, the applicable HUD program office would determine appropriate methods by which to oversee Section 3 compliance. HUD would be able to impose appropriate remedies and sanctions in accordance with the laws and regulations for the program under which the violation was found. HUD would continue to compile the information in a report on all expenditures subject to Section 3 for release to the public, and HUD believes providing for a program-specific implementation, while maintaining consistent review processes across programs, will ease burden on the entities subject to the Section 3 requirements.

III. Specific Questions for Comment

While HUD welcomes comments on all aspects of this proposed rule, HUD specifically requests comments on the following:

1. HUD seeks comments on the use of the statutory terms ''best efforts'' and ''greatest extent feasible'' in this proposed rule. Specifically, HUD seeks comments on whether this proposed rule should define these terms, whether the two terms should be considered interchangeable, whether only one term should be used, how the proposed rule should apply these terms relative to HUD's efforts to increase employment and training opportunities for low- and very low-income persons, and how recipients can most effectively/efficiently demonstrate they have satisfied these definitions in reporting to HUD. In accordance with the Section 3 statute, both HUD's existing Section 3 rule and this proposed rule do not provide an absolute mandate that employers hire Section 3 workers or that HUD funding recipients provide contracting opportunities to Section 3 businesses. Such a mandate would be infeasible, as there could be situations where no Section 3 workers or businesses are available or are qualified. However, HUD emphasizes its intention that the terms ''best efforts'' and ''greatest extent feasible'' should be read as very narrow qualifiers and seeks comment on how to best convey that.

As background, HUD's existing Section 3 rule provides that employment and other economic opportunities generated by certain HUD financial assistance must be directed to low and very low-income persons to the greatest extent feasible. The term ''best efforts'' is not used in the existing rule. This proposed rule contains requirements that more closely track the language of the Section 3 statute. Under this proposed rule, PHAs and other recipients receiving public housing financial assistance and their contractors and subcontractors must make their ''best efforts'' to provide employment and training opportunities generated by the public housing financial assistance to Section 3 workers in the statutorily-mandated order of priority, and must make their ''best efforts'' to award contracts and subcontracts to business concerns that provide economic opportunities to Section 3 workers in the statutorily-mandated order of priority. Also, following the Section 3 statute, this proposed rule would provide that: To the ''greatest extent feasible,'' recipients of funds in other HUD programs that provide housing and community development assistance must ensure that employment and training opportunities arising in connection with Section 3 projects are provided to Section 3 workers within the metropolitan area (or nonmetropolitan county) in which the project is located, and where feasible, priority should be given to specific categories of Section 3 workers; and contracts for work awarded in connection with Section 3 projects should be provided to Section 3 business concerns that provide economic opportunities to Section 3 workers residing within the metropolitan area (or nonmetropolitan county) in which the project is located, to the ''greatest extent feasible.''

2. HUD specifically requests comments on the proposal to move to labor hours or retain new hires for public housing financial assistance reporting and tracking. As discussed above, HUD believes that tracking labor hours consistent with existing tracking for prevailing wage requirements would reduce burden on recipients. HUD also believes that tracking labor hours will better allow HUD to determine if long-term employment opportunities are being generated. Unlike a labor hours measure, the new hire measure does not consider the share of actual work done by low- and very low-income workers, and new Section 3 hires may not be given the opportunity to work a substantial number of hours. By using a new hire measure, the Section 3 obligation is fulfilled by hiring Section 3 workers for jobs of any duration, rather than prioritizing opportunities for sustained employment. Additionally, using a new hire measure explicitly values entry rather than retention of workers, and thus provides an incentive for high turnover. While HUD believes that using labor hours for all financial assistance subject to Section 3 requirements will reduce burden, HUD has heard from some PHAs that they may prefer to maintain the use of new hires. HUD requests those PHAs provide feedback on why maintaining the new hire framework is a benefit. HUD seeks comments from PHAs on alternative 2 regulatory language that would retain the new hire framework for tracking public housing financial assistance, but with the same benchmarking requirements that are in this proposed rule. HUD also seeks comments on how retaining new hires for public housing financial assistance while using labor hours for Section 3 projects will work for recipients, contractors, and subcontractors, especially for those who work with multiple funding sources.

3. As discussed in this preamble, this proposed rule would set the threshold for applicability of Section 3 requirements for Section 3 projects to when the amount of the assistance to the project exceeds $200,000. HUD also provides that all projects that receive funding from HUD's Lead Hazard Control and Healthy Homes programs are covered, and notes that Section 8 programs were not included in the Section 3 statute and are not covered in this rule. HUD seeks comment on whether an alternate threshold would be more appropriate or equally effective to the proposed $200,000 per project threshold. HUD also seeks comment on the inclusion of all projects under the HUD's Lead Hazard Control and Healthy Homes programs and exclusion of Section 8 programs.

In addition to seeking comments on an appropriate per project threshold, HUD seeks comments on whether the threshold for Section 3 projects should be established by project, total funding received by the recipient, or whether the threshold should be based on total funds expended by a recipient. Establishing a project threshold has advantages in that it ties Section 3 obligations to the specific projects that are generating economic opportunities. However, HUD understands that there may be disadvantages to using a threshold based on project size. The term ''project'' is defined differently by different HUD programs, which could make a uniform application of this rule difficult. Also, recipients might be able to change the scope of what would be considered a ''project'' to avoid compliance with Section 3.

If HUD were to use a threshold based on total funding a recipient receives, rather than a per-project threshold, HUD seeks comment on whether the $200,000 threshold included in this proposed rule should be maintained, or whether the rule should adopt a different threshold. Using the $200,000 threshold as proposed in this rule, HUD estimates that less than 4 percent of grantees receiving funds from HUD's Office of Community Planning and Development Program will be exempt from Section 3, and less than 0.1 percent of total awards will be exempt. Applying a larger recipient threshold, such as $400,000, would increase the number of recipients exempted from Section 3 requirements to 20 percent and only increase the amount of funding exempt from Section 3 coverage to 1.5 percent. This would significantly reduce compliance burden from the current rule for smaller grantees without significantly reducing the funds subject to Section 3.

4. HUD seeks comment on HUD's proposal to include hours worked by Section 3 business employees in the Targeted Section 3 Worker definitions as a way to report all Section 3 activities in a single metric rather than reporting on Section 3 business concern participation separately through the existing aggregate dollars spent calculation. HUD also seeks comment on whether the changes to the Section 3 business concern definition are appropriate to the proposed new framework, especially the change that to qualify as a Section 3 business over 75 percent of the labor hours performed for the business must be performed by low- or very low-income persons versus the current requirement that 30 percent of permanent, full-time employee, include persons who are currently Section 3 residents, or within 3 years of the date of first employment with the business concern were Section 3 residents.

5. As explained by this preamble, this proposed rule would provide that small PHAs would not be required to report labor hour or new hire figures to HUD. HUD seeks comment on whether small PHAs should be required to report as other PHAs are if they put out a bid for a single procurement that exceeds the project threshold discussed in the above paragraph.

6. HUD seeks comments on whether Section 3 requirements, as it applies to Section 3 projects, should apply to all subcontractors, and whether at a certain level HUD should consider reducing the

reporting or compliance burden for subcontractors.

7. HUD requests comment on whether its initial and future benchmarks should include benchmarks for both the number of labor hours worked by Section 3 workers divided by the total number of labor hours for all workers and the number of labor hours worked by Targeted Section 3 workers divided by the total number of labor hours for all workers. Alternatively, HUD seeks comment on limiting the benchmark to include Targeted Section 3 workers only.

8. For Section 3 projects, the statute requires that ''where feasible, priority should be given to low- and very low-income persons residing within the service area of the project or the neighborhood in which the project is located.'' The statute does not define ''neighborhood'' or ''service area'' for purposes of how recipients determine where they should focus their prioritization. The lack of definitions complicates compliance for contractors, subcontractors, and grantees receiving multiple types of HUD financial assistance. HUD proposes to provide a definition for recipients to use when prioritizing and reporting workers for Section 3 projects. The definition differs from existing regulatory definitions and local or state definitions, and HUD specifically requests comment on whether the definition works for recipients or if a different definition for ''neighborhood'' or ''service area'' is needed for purposes of Section 3. HUD also asks whether the 1 mile and 5,000 population radius is an appropriate geographic size of a 'neighborhood' or 'service area'.

9. HUD provides that a Targeted Section 3 worker includes current YouthBuild participants and asks whether that definition should be expanded to include previous YouthBuild workers that are under 24 years of age or those who are still eligible to participate in YouthBuild, but may have graduated out of the program.

IV. Findings and Certifications

Regulatory Review—Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are ''outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.'' Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public.

This rule was determined to be a ''significant regulatory action'' as defined in Section 3(f) of the order (although not an economically significant regulatory action under the order). Consistent with Executive Order 13563, this rule creates new part 75 regulations that would replace the part 135 regulations, with the intention to make compliance with Section 3 more effective and less burdensome, and therefore, help to contribute to job creation for low- and very low-income persons. As noted earlier in this preamble, HUD has prepared an initial Regulatory Impact Analysis (RIA) that addresses the costs and benefits of the proposed rule. HUD's RIA is part of the docket file for this rule.

The docket file is available for public inspection in the Regulations Division, Office of the General Counsel, Room 10276, 451 7th Street SW, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at 202–402–3055 (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 toll-free 800–877–8339.

Environmental Impact

The proposed rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this proposed rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and on the private sector. This proposed rule does not impose a Federal mandate on any state, local, or tribal government, or on the private sector, within the meaning of UMRA.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis 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. As has been discussed in this preamble, this rule proposes to update HUD's Section 3 regulations and replace them with a new 24 CFR part 75, for which the objective is to increase employment opportunities for low- and very low-income persons and businesses that are owned by or employ such persons. These entities generally are small and therefore strengthening the requirements of Section 3 should benefit small businesses that are Section 3 businesses. This rule also considers the burden on small PHAs, defined in this proposed rule as a public housing authority that manages or operates fewer than 250 public housing units, and reduces the burden on them through a new streamlined reporting process that would not require them to report labor hours or new hires. There are approximately 2,950 PHAs, of which approximately 2,250 are small.

As more fully discussed in the accompanying RIA, the number of economic opportunities generated for Section 3 residents and businesses will not increase to the degree that this rule would have a significant economic impact on a substantial number of small entities. In addition, for those small entities that must comply with this proposed rule, the changes made by this proposed rule are designed to reduce burden on them, as well as all recipients. The current recordkeeping and reporting requirements for Section 3 is 90,180 hours with a cost of $1,817,000. HUD estimated that this new rule will reduce the number of hours by 68 percent to 25,910 hours. The biggest reduction will be for small PHAs that will no longer need to do quantitative analysis with a total estimated time saving of 12,375 hours with a cost of $281,036, or approximately $125 for small PHAs. HUD also anticipates an across the board savings in recordkeeping given the time savings resulting from less time reporting new hires as a separate metric.

For these reasons, HUD has determined that this rule would not have a significant economic impact on a substantial number of small entities. Notwithstanding HUD's determination that this rule will not have a significant effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either: (1) Imposes substantial direct compliance costs on State and local governments and is not required by statute, or (2) preempts State law, unless the agency meets the consultation and funding requirements of Section 6 of the Executive Order. This proposed rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments nor preempt state law within the meaning of the Executive Order.

Paperwork Reduction Act

Currently, 24 CFR part 135 requires that all recipients track and report Section 3 information to HUD, includes prescriptive contractual language, requires compliance by contractors of the Section 3 requirements, contains reporting and recordkeeping requirements, and provides for the filing of Section 3 complaints. Section 3 Performance Evaluation and Registration System (SPEARS) is the main site in which HUD captures the number of Section 3 residents hired and the amount of contracts awarded to Section 3 businesses. The existing information collection requirement for these requirements has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number 2529–0043.

The proposed rule would change the existing reporting requirement to decrease qualitatively those who need to report, excluding small PHAs and recipients of Section 3 projects under the $200,000 threshold, and require reporting only once a year by recipients of completed projects. HUD provides in §§ 75.15 and 75.25 that recipients would be required to submit reports to HUD annually either in a qualitative form or quantitative form. HUD includes all the large PHAs in the § 75.15(a) reporting number for reporting on the Section 3 benchmarks and estimates 2 hours to track and report annually given the amount of funds handled by these PHAs. HUD also estimates that a PHA will employ approximately seven contractors or subcontractors each fiscal year that would need to track and report up to the PHA, each at one-half an hour for reporting time. Lastly, HUD estimates that 5 percent of the 700 large PHAs may fail the Section 3 benchmarks and would need to report on their qualitative efforts along with the 2,250 small PHAs and estimates that such reporting would take one-half an hour.

As for § 75.25(a), HUD estimates that 66 percent of most program recipients would complete projects in a fiscal year that need to be reported except that for the HOME program, HUD estimates that 90 percent of HOME recipients would complete projects in a fiscal year, at an estimate of 3,600 recipients. Given these projects are more diverse in size, HUD estimates that the average time to report on the Section 3 benchmarks for recipients would be 1 hour. HUD also estimates that a Section 3 project will engage approximately five contractors or subcontractors each fiscal year that would also need to track and report up to the Section 3 project recipient, each at one-half an hour for reporting time. Lastly, HUD estimates that 5 percent of the 3,600 recipients may fail the Section 3 benchmarks and would need to report on their qualitative efforts and estimates that such reporting would take one-half an hour.

HUD also notes that the rule no longer requires the inclusion of prescriptive contractual language. See §§ 75.17 and 75.27. HUD believes that this change will result in a de minimis upfront burden related to updating contracts, if recipients, subrecipients and contractors chose to do so, but that removing the requirement will actually reduce burden on recipients, subrecipients, and contractors on a sustained basis by giving them flexibility to use alternative or existing contractual language. HUD also provides for recordkeeping requirements at § 75.31 and believes that the maintaining of records by recipients will take a recipient approximately 2 hours. However, HUD notes that some programs, such as HOME, already have recordkeeping requirements that are part of existing approved Information Collection Requests and, thus, excludes those programs from the burden matrix. Lastly, HUD maintains the option for individuals to file complaints and retains the frequency number that was in the existing Section 3 reporting burden.

In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number. The current recordkeeping requirements for Section 3 is 90,180 hours with a cost of $1,817,000. HUD estimates that this new rule will reduce the number of hours by 68 percent to 25,910 hours for a total cost savings of approximately $1.2 million. The overall reporting and recordkeeping burden is estimated as follows:

Information collection	Number of respondents	Frequency of response per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
§ 75.15(a) Labor Hour or New Hire Reporting for PHA	700	1	2	1,400	$22.71	$31,794.00
§ 75.15(a) Labor Hour or New Hire Reporting for Contractors or Subcontractors of PHAs	4,900	1	0.5	2,450	22.71	55,639.50
§ 75.15(b)–(d) Qualitative Reporting for PHAs	2,300	1	0.5	1,150	22.71	26,116.50
§ 75.25(a) Labor Hour Reporting for Section 3 Projects	3,600	1	1	3,600	22.71	81,756.00
§ 75.25(a) Labor Hour Reporting for Contractors and Subcontractors on Section 3 Projects	10,800	1	0.5	5,400	22.71	122,634.00
§ 75.25(b) Qualitative Reporting for Section 3 Projects	180	1	0.5	90	22.71	2,043.90

Information collection	Number of respondents	Frequency of response per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
§ 75.31 Recordkeeping	5,900	1	2	11,800	22.71	267,978.00
§ 75.33 Complaints	20	1	1	20	10.00	200.00
Total				25,910.00		588,161.90

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning the information collection requirements in the proposed rule regarding:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Whether the proposed collection of information enhances the quality, utility, and clarity of the information to be collected; and

(4) Whether the proposed information collection minimizes the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses).

Interested persons are invited to submit comments regarding the information collection requirements in this rule. The proposed information collection requirements in this rule have been submitted to OMB for review under section 3507(d) of the Paperwork Reduction Act. Under the provisions of 5 CFR part 1320, OMB is required to make a decision concerning this collection of information between 30 and 60 days after the publication date. Therefore, a comment on the information collection requirements is best assured of having its full effect if OMB receives the comment within 30 days of the publication. This time frame does not affect the deadline for comments to the agency on the proposed rule, however. Comments must refer to the proposed rule by name and docket number (FR–6085) and must be sent to:

HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Fax number: 202- 395–6947, and

Colette Pollard, HUD Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street SW, Room 2204, Washington, DC 20410

Interested persons may submit comments regarding the information collection requirements electronically through the Federal eRulemaking Portal at *http://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 *http://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.

List of Subjects

24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Crime, Government contracts, Grant programs-housing and community development, Individuals with disabilities, Intergovernmental relations, Loan programs-housing and community development, Low- and moderate-income housing, Mortgage insurance, Penalties, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

24 CFR Part 14

Claims, Equal access to justice, Lawyers, Reporting and recordkeeping requirements.

24 CFR Part 75

Administrative practice and procedure, Community development, Government contracts, Grant programs—housing and community development, Housing, Loan programs—housing and community development, Reporting and recordkeeping requirements, Small businesses.

24 CFR Part 91

Aged, Grant programs-housing and community development, Homeless, Individuals with disabilities, Low- and moderate-income housing, Reporting and recordkeeping requirements.

24 CFR Part 92

Administrative practice and procedure, Low- and moderate-income housing, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 93

Administrative practice and procedure, Grant programs-housing and community development, Low- and moderate-income housing, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 135

Administrative practice and procedure, Community development, Equal employment opportunity, Government contracts, Grant programs—housing and community development, Housing, Loan programs—housing and community development, Reporting and recordkeeping requirements, Small businesses.

24 CFR Part 266

Intergovernmental relations, Low- and moderate-income housing, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 570

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs—education, Grant programs-housing and community development, Guam, Indians, Loan programs—housing and community development, Low- and moderate-income housing, Northern Mariana Islands, Pacific Islands Trust Territory, Puerto Rico, Reporting and recordkeeping requirements, Student aid, Virgin Islands.

24 CFR Part 576

Community facilities, Grant programs—housing and community development, Grant programs—social programs, Homeless, Reporting and recordkeeping requirements.

24 CFR Part 578

Community development, Community facilities, Grant programs—

housing and community development, Grant programs—social programs, Homeless, Reporting and recordkeeping requirements.

24 CFR Part 905

Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 964

Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 983

Grant programs—housing and community development, Low- and moderate-income housing, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 1000

Aged, Community development block grants, Grant programs—housing and community development, Grant programs—Indians, Indians, Individuals with disabilities, Public housing, Reporting and recordkeeping requirements.

Accordingly, for the reasons described in the preamble, HUD proposes to amend 24 CFR parts 5, 14, 75, 91, 92, 93, 135, 266, 570, 576, 578, 905, 964, 983, and 1000 as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

■ 1. The authority for part 5 is revised to read as follows:

Authority: 12 U.S.C. 1701u and 1701x; 42 U.S.C. 1437a, 1437c, 1437d, 1437f, 1437n, 3535(d); Sec. 327, Pub. L. 109–115, 119 Stat. 2936; Sec. 607, Pub. L. 109–115, 119 Stat. 3051 (42 U.S.C. 14043e *et seq.*); E.O. 13279, 67 FR 77141, 3 CFR, 2002 Comp., p. 258; and E.O. 13559, 75 FR 71319, 3 CFR 2010 Comp., p. 273.

§ 5.105 [Amended]

■ 2. Amend § 5.105(a) by removing ''; section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and implementing regulations at 24 CFR part 135.''

PART 14—IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT IN ADMINISTRATIVE PROCEEDINGS

■ 3. The authority for part 14 continues to read as follows:

Authority: 5 U.S.C. 504(c)(1); 42 U.S.C. 3535(d).

§ 14.115 [Amended]

■ 4. Amend § 14.115 by removing and reserving paragraph (a)(5).

■ 5. Add part 75 to read as follows:

PART 75—ECONOMIC OPPORTUNITIES FOR LOW- AND VERY LOW–INCOME PERSONS

Sec.

Subpart A—General Provisions

75.1 Purpose.
75.3 Applicability.
75.5 Definitions.
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Subpart D—Provisions for Multiple Funding Sources, Recordkeeping, and Compliance

75.29 Multiple funding sources.
75.31 Recordkeeping.
75.33 Compliance.

Authority: 12 U.S.C. 1701u; 42 U.S.C. 3535(d).

Subpart A—General Provisions

§ 75.1 Purpose.

This part establishes the requirements to be followed to ensure the objectives of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Section 3) are met. The purpose of Section 3 is to ensure that economic opportunities, most importantly employment, generated by certain HUD financial assistance shall be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing or residents of the community in which the Federal assistance is spent.

§ 75.3 Applicability of Section 3.

(a) *General applicability.* Section 3 applies to public housing financial assistance and Section 3 projects, as follows:

(1) *Public housing financial assistance.* Public housing financial assistance means:

(i) Development assistance provided pursuant to section 5 of the United States Housing Act of 1937 (the 1937 Act);

(ii) Operations and management assistance provided pursuant to section 9(e) of the 1937 Act; and

(iii) Development, modernization, and management assistance provided pursuant to section 9(d) of the 1937 Act.

(2) *Section 3 projects.* (i) Section 3 projects means housing rehabilitation, housing construction, and other public construction projects assisted under HUD programs that provide housing and community development financial assistance when the amount of assistance to the project exceeds a threshold of $200,000. This threshold does not apply where the assistance is from the Lead Hazard Control and Healthy Homes programs, as authorized by section 501 of the Housing and Urban Development Act of 1970 (12 U.S.C. 1701z–1), the Lead-Based Paint Poisoning Prevention Act (42 U.S.C 4801 *et seq.*); and the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851 *et seq.*) The project is the site or sites together with any building(s) and improvements located on the site(s) that are under common ownership, management, and financing.

(ii) HUD may adjust the threshold provided in paragraph (a)(2)(i) of this section not less than every 5 years based on a national construction cost inflation factor, and new thresholds will be published in the **Federal Register**, subject to public comment.

(iii) The requirements in this part apply to an entire Section 3 project, regardless of whether the project is fully or partially assisted under HUD programs that provide housing and community development financial assistance.

(b) *Contracts for materials.* Section 3 requirements do not apply to material supply contracts.

(c) *Indian and Tribal preferences.* Contracts, subcontracts, grants, or subgrants subject to section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5307(b)) or subject to tribal preference requirements as authorized under 101(k) of the Native American Housing Assistance and Self-Determination Act (25 U.S.C. 4111(k)) must provide preferences in employment, training, and business opportunities to Indians and Indian organizations, and are therefore not subject to the requirements of this part.

(d) *Other HUD assistance and other Federal assistance.* Recipients that are not subject to Section 3 are encouraged to consider ways to support the purpose of Section 3.

§ 75.5 Definitions.

The terms *HUD, Public housing,* and *Public Housing Agency (PHA)* are defined in 24 CFR part 5. The following definitions also apply to this part:

1937 Act means the United States Housing Act of 1937, 42 U.S.C. 1437 *et seq.*

Contractor means any entity entering into a contract with:

(1) A recipient to perform work in connection with the expenditure of public housing financial assistance or for work in connection with a Section 3 project; or

(2) A subrecipient for work in connection with a Section 3 project.

Labor hours means the number of paid hours worked by persons on a Section 3 project or employed with funds that include public housing financial assistance.

Low-income person means a person as defined in section 3(b)(2) of the 1937 Act.

Material supply contracts means contracts for the purchase of products and materials, including, but not limited to, lumber, drywall, wiring, concrete, pipes, toilets, sinks, carpets, and office supplies.

Alternative 2—Definition of New Hire

New hire means a full- or part-time employee for permanent, temporary, or seasonal employment opportunities who:

(1) Was not on the payroll of the PHA, or the PHA's contractor or subcontractor, or other recipient receiving public housing financial assistance funds at the beginning of the award of public housing financial assistance; or

(2) Was hired by contractors or subcontractors on a per-project basis as a result of receiving public housing financial assistance.

Professional services means non-construction services, including, but not limited to, contracts for legal services, financial consulting, accounting services, environmental assessment, architectural services, and civil engineering services.

Public housing financial assistance means assistance as defined in § 75.3(a)(1).

Public housing project is defined in 24 CFR 905.108.

Qualified census tract means any census tract (or equivalent geographic area defined by the Bureau of the Census) in which at least 50 percent of households have an income of less than 60 percent of Area Median Gross Income (AMGI); or where the poverty rate is at least 25 percent and where the census tract is designated as a qualified census tract by HUD.

Recipient means any entity that receives directly from HUD public housing financial assistance or housing and community development assistance that funds Section 3 projects, including, but not limited to, any State, local government, instrumentality, PHA, Indian tribe, tribal organization, or other public agency, public or private nonprofit organization.

Section 3 means section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u).

Section 3 business concern means:

(1) A business concern that meets one of the following criteria:

(i) It is at least 51 percent owned by low- or very low-income persons;

(ii) Over 75 percent of the labor hours performed for the business are performed by low- or very low-income persons; or

(iii) It is a business at least 25 percent owned by current public housing residents or residents who currently live in Section 8-assisted housing.

(2) The status of a Section 3 business concern shall not be negatively affected by a prior arrest or conviction of its owner(s) or employees.

(3) Nothing in this part shall be construed to require the contracting or subcontracting of a Section 3 business concern. Section 3 business concerns are not exempt from meeting the specifications of the contract.

Section 3 project means a project defined in § 75.3(a)(2).

Section 3 worker means:

(1) Any worker who fits one of the following categories:

(i) The worker's income is below the income limit established by HUD.

(ii) The worker lives in a qualified census tract.

(iii) The worker is employed by a Section 3 business concern.

(2) The status of a Section 3 worker shall not be negatively affected by a prior arrest or conviction.

(3) Nothing in this part shall be construed to require the employment of someone who meets this definition of a Section 3 worker. Section 3 workers are not exempt from meeting the qualifications of the position to be filled.

Section 8-assisted housing refers to housing receiving project-based rental assistance or tenant-based assistance under section 8 of the 1937 Act.

Service area or the neighborhood of the project means an area within one mile of the Section 3 project or, if fewer than 5,000 people live within one mile of a Section 3 project, within a circle centered on the Section 3 project that is sufficient to encompass a population of 5,000 people according to the most recent U.S. Census.

Small PHA means a public housing authority that manages or operates fewer than 250 public housing units.

Subcontractor means any entity that has a contract with a contractor to undertake a portion of the contractor's obligation to perform work in connection with the expenditure of public housing financial assistance or for a Section 3 project.

Subrecipient has the meaning provided in the applicable program regulations, or in 2 CFR 200.93.

Targeted Section 3 worker has the meanings provided in § 75.11, § 75.21, or § 75.29, and does not exclude an individual that has a prior arrest or conviction.

Very low-income person means the definition for this term set forth in Section 3(b)(2) of the 1937 Act.

YouthBuild programs refers to YouthBuild programs receiving assistance under the Workforce Innovation and Opportunity Act (29 U.S.C. 3226).

§ 75.7 Requirements applicable to HUD NOFAs for Section 3 covered programs.

All notices of funding availability (NOFAs) issued by HUD that announce the availability of funding covered by § 75.3 will include notice that this part is applicable to the funding and may include, as appropriate for the specific NOFA, points or bonus points for Section 3 plans.

Subpart B—Additional Provisions for Public Housing Financial Assistance

§ 75.9 Requirements.

(a) *Employment and training.* (1) Consistent with existing Federal, state, and local laws and regulations, PHAs or other recipients receiving public housing financial assistance, and their contractors and subcontractors, must make their best efforts to provide employment and training opportunities generated by the public housing financial assistance to Section 3 workers.

(2) PHAs or other recipients, and their contractors and subcontractors, must make their best efforts described in paragraph (a)(1) of this section to Section 3 workers in the following order of priority:

(i) To residents of the public housing projects for which the public housing financial assistance is expended;

(ii) To residents of other public housing projects managed by the PHA that is expending the assistance or to residents of Section 8-assisted housing managed by the PHA;

(iii) To participants in YouthBuild programs; and

(iv) To low- and very low-income persons residing within the metropolitan area (or nonmetropolitan county) in which the assistance is expended.

(b) *Contracting.* (1) Consistent with existing Federal, state, and local laws and regulations, PHAs and other recipients of public housing financial assistance, and their contractors and subcontractors, must make their best efforts to award contracts and subcontracts to business concerns that provide economic opportunities to Section 3 workers.

(2) PHAs and other recipients, and their contractors and subcontractors, must direct the efforts described in paragraph (b)(1) of this section in the following order of priority:

(i) To Section 3 business concerns that provide economic opportunities for residents of the public housing projects for which the assistance is provided;

(ii) To Section 3 business concerns that provide economic opportunities for residents of other public housing projects managed by the PHA that is providing the assistance or for residents of Section 8-assisted housing managed by the PHA;

(iii) To YouthBuild programs; and

(iv) To Section 3 business concerns that provide economic opportunities to Section 3 workers residing within the metropolitan area (or nonmetropolitan county) in which the assistance is provided.

§ 75.11 Targeted Section 3 worker for public housing financial assistance.

Alternative 1—Paragraph (a)

(a) *Targeted Section 3 worker.* A Targeted Section 3 worker for public housing financial assistance means:

(1) A worker employed by a Section 3 business concern; or

(2) A worker who currently is or who was when hired by the worker's current employer:

(i) A resident in a public housing project or Section 8-assisted housing;

(ii) A resident of other projects managed by the PHA that is expending assistance; or

(iii) A current YouthBuild participant.

Alternative 2—Paragraph (a)

(a) *Targeted Section 3 worker.* A Targeted Section 3 worker for public housing financial assistance means:

(1) A new hire employed by a Section 3 business concern; or

(2) A new hire employed by the worker's current employer, who is also one of the following:

(i) A resident in a public housing project or Section 8-assisted housing;

(ii) A resident of other projects managed by the PHA that is expending assistance; or

(iii) A current YouthBuild.

(b) [Reserved]

§ 75.13 Section 3 safe harbor.

(a) *General.* PHAs and other recipients will be considered to have complied with requirements in this part, in the absence of evidence to the contrary if they:

(1) Certify that they have followed the prioritization of effort in § 75.9; and

(2) Meet or exceed the applicable Section 3 benchmarks as described in paragraph (b) of this section.

(b) *Establishing benchmarks.* (1) HUD will establish Section 3 benchmarks for Section 3 workers or Targeted Section 3 workers or both through a document published in the **Federal Register**. HUD may establish a single nationwide benchmark for Section 3 workers and a single nationwide benchmark for Targeted Section 3 workers, or may establish multiple benchmarks based on geography, the type of public housing financial assistance, or other variables. HUD will update the benchmarks through a document published in the **Federal Register**, subject to public comment, not less frequently than once every 3 years.

(2) In establishing the Section 3 benchmarks, HUD may consider the industry averages worked by specific categories of workers or in different localities or regions; prior reports pursuant to this section; and any other factors HUD deems important. In establishing the Section 3 benchmarks, HUD will exclude professional services.

Alternative 1—Paragraph (b)(3)

(3) Section 3 benchmarks will consist of the following two ratios:

(i) The number of labor hours worked by Section 3 workers divided by the total number of labor hours worked by all workers funded by public housing financial assistance in the PHA's or other recipient's fiscal year.

(ii) The number of labor hours worked by Targeted Section 3 workers, as defined in § 75.11(a), divided by the total number of labor hours worked by all workers funded by public housing financial assistance in the PHA's or other recipient's fiscal year.

Alternative 2—Paragraph (b)(3)

(3) Section 3 benchmarks will consist of the following two ratios:

(i) The number of new hires that are Section 3 workers divided by the total number of new hires funded by public housing financial assistance in the PHA's or other recipient's fiscal year.

(ii) The number of new hires that are Targeted Section 3 workers, as defined in § 75.11(a), divided by the total number of new hires funded by public housing financial assistance in the PHA's or other recipient's fiscal year.

§ 75.15 Reporting.

Alternative 1—Paragraph (a)

(a) *Reporting of labor hours.* (1) For public housing financial assistance, PHAs and other recipients must report in a manner prescribed by HUD:

(i) The total number of labor hours worked;

(ii) The total number of labor hours worked by Section 3 workers; and

(iii) The total number of labor hours worked by Targeted Section 3 workers.

(2) The labor hours reported under paragraph (a)(1) of this section must include the total number of labor hours worked with public housing financial assistance for the PHA's or other recipient's fiscal year, including labor hours worked by any contractors and subcontractors that the PHA or other recipient is required, or elects pursuant to paragraph (a)(3) of this section, to report.

(3) PHAs and other recipients reporting under this section, as well as contractors and subcontractors who report to PHAs and recipients, may report labor hours by Section 3 workers, under paragraph (a)(1)(ii) of this section, and labor hours by Targeted Section 3 workers, under paragraph (a)(1)(iii) of this section, from professional services without including labor hours from professional services in the total number of labor hours worked under paragraph (a)(1)(i) of this section. If a contract covers both professional services and other work and the PHA, other recipient, contractor, or subcontractor chooses not to report labor hours from professional services, the labor hours under the contract that are not from professional services must still be reported.

(4) PHAs and other recipients may report on the labor hours of a contractor or subcontractor based on the contractor or subcontractor's good faith assessment of the labor hours of a full-time or part-time employee if the contractor or subcontractor is not subject to other requirements specifying time and attendance reporting, or does not otherwise track labor hours.

Alternative 2—Paragraph (a)

(a) *Reporting of new hires.* (1) For public housing financial assistance, PHAs and other recipients must report in a form prescribed by HUD:

(i) The total number of new hires;

(ii) The total number of new hires that are Section 3 workers; and

(iii) The total number of new hires that are Targeted Section 3 workers.

(2) The new hires reported, under paragraph (a)(1)(i) of this section, must include the total number of new hires funded by public housing financial assistance for the PHA's or other recipient's fiscal year, including new hires funded by any contractors and subcontractors that the PHA or other recipient is required, or elects pursuant to paragraph (a)(3) of this section, to report.

(3) PHAs and other recipients reporting under this section, as well as contractors and subcontractors who report to PHAs and recipients, may report new hires of Section 3 workers, under paragraph (a)(1)(ii) of this section, and new hires of Targeted Section 3 workers, under paragraph (a)(1)(iii) of this section, performing professional services without including hires in professional services in the total number of new hires under paragraph (a)(1)(i) of this section. If a contract covers both professional services and other work and the PHA, recipient, contractor, or subcontractor chooses not to report new hires performing professional services, the new hires under the contract that are not performing professional services must still be reported.

(b) *Additional reporting if Section 3 benchmarks are not met.* If the PHA's or other recipient's reporting under paragraph (a) of this section indicates that the PHA or other recipient has not met the Section 3 benchmarks described in § 75.11, the PHA or other recipient will be required to report in a form prescribed by HUD on the qualitative nature of its activities or those of its contractors and subcontractors.

(c) *Reporting frequency.* Unless otherwise provided, PHAs or other recipients will report annually to HUD under paragraph (a) of this section, and where required under paragraph (b) of this section, in a manner consistent with reporting requirements for the applicable HUD program.

(d) *Reporting by Small PHAs.* Small PHAs will not be required to report under paragraph (a) of this section. Small PHAs are required to report on their qualitative efforts, as described in paragraph (b) of this section, in a manner consistent with reporting requirements for the applicable HUD program.

§ 75.17 Contract provisions.

(a) PHAs or other recipients must include language in any agreement or contract to apply Section 3 to contractors.

(b) PHAs or other recipients must require contractors to include language in any contract or agreement to apply Section 3 to subcontractors.

(c) PHAs or other recipients must require all contractors and subcontractors to meet the requirements of § 75.9, regardless of whether Section 3 language is included in contracts.

Subpart C—Additional Provisions for Housing and Community Development Financial Assistance

§ 75.19 Requirements.

(a) *Employment and training.* (1) To the greatest extent feasible, and consistent with existing Federal, state, and local laws and regulations, recipients covered by this subpart shall ensure that employment and training opportunities arising in connection with Section 3 projects are provided to Section 3 workers within the metropolitan area (or nonmetropolitan county) in which the project is located.

(2) Where feasible, recipients should provide opportunities and training described in paragraph (a)(1) of this section to:

(i) Section 3 workers residing within the service area or the neighborhood of the project; and

(ii) Participants in YouthBuild programs.

(b) *Contracting.* (1) To the greatest extent feasible, and consistent with existing Federal, state, and local laws and regulations recipients covered by this subpart shall ensure contracts for work awarded in connection with Section 3 projects are provided to Section 3 businesses concerns that provide economic opportunities to Section 3 workers residing within the metropolitan area (or nonmetropolitan county) in which the project is located.

(2) Where feasible, recipients should direct the efforts described in paragraph (b)(1) of this section to:

(i) Section 3 business concerns that provide economic opportunities to Section 3 workers residing within the service area or the neighborhood of the project; and

(ii) YouthBuild programs.

§ 75.21 Targeted Section 3 worker for housing and community development financial assistance.

(a) For purposes of this subpart, a Targeted Section 3 worker is:

(1) A worker employed by a Section 3 business concern; or

(2) A worker who is or was when hired by the worker's current employer:

(i) Living within the service area or the neighborhood of the project, as defined in § 75.5; or

(ii) A current YouthBuild participant.

(b) [Reserved]

§ 75.23 Section 3 safe harbor.

(a) *General.* Recipients will be considered to have complied with requirements in this part, in the absence of evidence to the contrary if they:

(1) Certify that they have followed the prioritization of effort in § 75.19; and

(2) Meet or exceed the applicable Section 3 benchmark as described in paragraph (b) of this section.

(b) *Establishing benchmarks.* (1) HUD will establish Section 3 benchmarks for Section 3 workers or Targeted Section 3 workers or both through a document published in the **Federal Register**. HUD may establish a single nationwide benchmark for Section 3 workers and a single nationwide benchmark for Targeted Section 3 workers, or may establish multiple benchmarks based on geography, the nature of the Section 3 project, or other variables. HUD will update the benchmarks through a document published in the **Federal Register**, subject to public comment, not less frequently than once every 3years.

(2) In establishing the Section 3 benchmarks, HUD may consider the industry averages for labor hours worked by specific categories of workers or in different localities or regions; averages for labor hours worked by Section 3 workers and Targeted Section 3 workers as reported by recipients pursuant to this section; and any other factors HUD deems important. In establishing the Section 3 benchmarks, HUD will exclude labor hours associated with professional services from the total labor hours, the labor hours worked by Section 3 workers, and the labor hours worked by Targeted Section 3 workers.

(3) Section 3 benchmarks will consist of the following two ratios:

(i) The number of labor hours worked by Section 3 workers divided by the total number of labor hours worked by all workers on a Section 3 project.

(ii) The number of labor hours worked by Targeted Section 3 workers divided by the total number of labor hours worked by all workers on a Section 3 project.

§ 75.25 Reporting.

(a) *Reporting of labor hours.* (1) For Section 3 projects, recipients must report in a manner prescribed by HUD:

(i) The total number of labor hours worked;

(ii) The total number of labor hours worked by Section 3 workers; and

(iii) The total number of labor hours worked by Targeted Section 3 workers.

(2) The labor hours reported under paragraph (a)(1) of this section must include the total number of labor hours worked on a Section 3 project, including labor hours worked under any subrecipients, contractors, and subcontractors that the recipient is required, or elects pursuant to paragraph (a)(3) of this section, to report.

(3) Recipients reporting under this section, as well as contractors and subcontractors who report to PHAs and recipients, may report labor hours by Section 3 workers, under paragraph (a)(1)(ii) of this section, and labor hours by Targeted Section 3 workers, under paragraph (a)(1)(iii) of this section, from professional services without including labor hours from professional services in the total number of labor hours worked under paragraph (a)(1)(i) of this section. If a contract covers both professional services and other work and the recipient or contractor or subcontractor chooses not to report labor hours from professional services, the labor hours under the contract that are not from professional services must still be reported.

(4) Recipients may report on the labor hours of a contractor or subcontractor based on the contractor or subcontractor's good faith assessment of the labor hours of a full-time or part-time employee if the contractor or subcontractor is not subject to other requirements specifying time and attendance reporting, or does not otherwise track labor hours.

(b) *Additional reporting if Section 3 benchmarks are not met.* If the recipient's reporting under paragraph (a) of this section indicates that the recipient has not met the Section 3 benchmarks described in § 75.23, the recipient must report in a form prescribed by HUD on the qualitative nature of the activities the recipient or its contractors and subcontractors pursued in order to comply with this part.

(c) *Reporting frequency.* Unless otherwise provided, recipients must report annually to HUD under paragraph (a) of this section, and, where required, under paragraph (b) of this section, on all projects completed within the reporting year in a manner consistent with reporting requirements for the applicable HUD program.

§ 75.27 Contract provisions.

(a) Recipients must include language applying Section 3 requirements in any subrecipient agreement or contract for a Section 3 project.

(b) Recipients of Section 3 projects must require subrecipients, contractors, and subcontractors to meet the requirements of § 75.19, regardless of whether Section 3 language is included in recipient or subrecipient agreements, program regulatory agreements, or contracts.

Subpart D—Provisions for Multiple Funding Sources, Recordkeeping, and Compliance

§ 75.29 Multiple funding sources.

(a) If a housing rehabilitation, housing construction or other public construction project is subject to Section 3 pursuant to § 75.3(a)(1) and (2), the recipient must follow subpart B of this part for the public housing financial assistance and may follow either subpart B or C of this part for the housing and community development financial assistance. For this project, the following applies:

(1) For housing and community development financial assistance, a Targeted Section 3 worker is any worker who meets the definition of a Targeted Section 3 worker in either subpart B or C of this part; and

Alternative 1—Paragraph (a)(2)

(2) The recipients of both sources of funding shall report on the housing rehabilitation, housing construction, or other public construction project as a whole and shall identify the multiple associated recipients. PHAs and other recipients must report the following information:

(i) The total number of labor hours worked on the project;

(ii) The total number of labor hours worked by Section 3 workers on the project; and

(iii) The total number of labor hours worked by Targeted Section 3 workers on the project.

Alternative 2—Paragraph (a)(2)

(2) The recipients of both sources of funding shall report on the housing rehabilitation, housing construction, or other public construction project as a whole and shall identify the multiple associated recipients.

(i) PHAs and other recipients must report the following information:

(A) The total number of labor hours worked on the project;

(B) The total number of labor hours worked by Section 3 workers on the project; and

(C) The total number of labor hours worked by Targeted Section 3 workers, as defined in either subpart B or C of this part, on the project.

(ii) The PHA must also report the following information:

(A) The total number of new hires on the project;

(B) The total number of Section 3 workers that are new hires on the project; and

(C) The total number of Targeted Section 3 workers, as defined in either subpart B or C of this part, that are new hires on the project.

(b) If a housing rehabilitation, housing construction, or other public construction project is subject to Section 3 because the project is assisted with funding from multiple programs that exceed the threshold in § 75.3(a)(2), the recipient or recipients must follow subpart C of this part, and must report to the applicable HUD program office, as prescribed by HUD.

§ 75.31 Recordkeeping.

(a) HUD shall have access to all records, reports, and other documents or items of the recipient that are maintained to demonstrate compliance with the requirements of this part, or that are maintained in accordance with the regulations governing the specific HUD program by which the Section 3 project is governed, or the public housing financial assistance is provided or otherwise made available to the recipient, contractor, or subcontractor.

(b) Recipients must maintain documentation, or ensure that a subrecipient, contractor, or subcontractor that employs the worker maintains certification, to ensure that workers meet the definition of a Section 3 worker or Targeted Section 3 worker, as follows:

(1) For a worker to qualify as a Section 3 worker, one of the following must be maintained:

(i) A worker's self-certification that their income is below the income limit from the prior calendar year;

(ii) A worker's self-certification of participation in a means-tested program such as public housing or Section 8-assisted housing;

(iii) Certification from a PHA, or the owner or property manager of project-based Section 8-assisted housing, or the administrator of tenant-based Section 8-assisted housing that the worker is a participant in one of their programs;

(iv) An employer's certification that the worker's income from that employer is below the income limit when based on an employer's calculation of what the worker's wage rate would translate to if annualized on a full-time basis;

(v) An employer's confirmation that a worker's residency is in a qualified census tract; or

(vi) An employer's certification that the worker is employed by a Section 3 business.

(2) For a worker to qualify as a Targeted Section 3 worker, one of the following must be maintained:

(i) For a worker to qualify as a Targeted Section 3 worker under subpart B of this part:

(A) A worker's self-certification of participation in public housing or Section 8-assisted housing programs;

(B) Certification from a PHA, or the owner or property manager of project-based Section 8-assisted housing, or the administrator of tenant-based Section 8-assisted housing that the worker is a participant in one of their programs;

(C) An employer's certification that the worker is employed by a Section 3 business concern; or

Alternative 1—Paragraph (b)(2)(i)(D)

(D) A worker's certification that the worker is a YouthBuild participant.

Alternative 2—Paragraph (b)(2)(i)(D)

(D) An employer's certification that the worker is a YouthBuild participant.

(ii) For a worker to qualify as a Targeted Section 3 worker under subpart C of this part:

(A) An employer's confirmation that a worker's residence is within 1 mile of the work site or, if fewer than 5,000 people live within 1 mile of a work site, within a circle centered on the work site that is sufficient to encompass a population of 5,000 people according to the most recent U.S. Census;

(B) An employer's certification that the worker is employed by a Section 3 business concern; or

(C) A worker's self-certification that the worker is a YouthBuild participant.

(c) The documentation described in paragraph (b) of this section must be maintained for the time period required for record retentions in accordance with applicable program regulations or, in the absence of applicable program regulations, 2 CFR part 200.

§ 75.33 Compliance.

(a) *Records of compliance.* Each recipient shall maintain adequate records demonstrating compliance with this part.

(b) *Complaints.* Complaints alleging failure of compliance with this part may be reported to the HUD program office responsible for the public housing financial assistance or the Section 3 project.

(c) *Monitoring.* HUD will monitor compliance with the requirements of this part. The applicable HUD program office will determine appropriate methods by which to oversee Section 3 compliance. HUD may impose appropriate remedies and sanctions in accordance with the laws and regulations for the program under which the violation was found.

PART 91—CONSOLIDATED SUBMISSIONS FOR COMMUNITY PLANNING AND DEVELOPMENT PROGRAMS

■ 6. The authority citation for part 91 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 3601–3619, 5301–5315, 11331–11388, 12701–12711, 12741–12756, and 12901–12912.

§ 91.215 [Amended]

■ 7. Amend § 91.215(j) by removing ''24 CFR part 135'' and adding in its place ''24 CFR part 75''.

§ 91.225 [Amended]

■ 8. Amend § 91.225(a)(7) by removing ''24 CFR part 135'' and adding in its place ''24 CFR part 75''.

§ 91.325 [Amended]

■ 9. Amend § 91.325(a)(7) by removing ''24 CFR part 135'' and adding in its place ''24 CFR part 75''.

§ 91.425 [Amended]

■ 10. Amend § 91.425(a)(1)(vii) by removing ''24 CFR part 135'' and adding in its place ''24 CFR part 75''.

PART 92—HOME INVESTMENT PARTNERSHIPS PROGRAM

■ 11. The authority citation for part 92 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 12 U.S.C. 1701x and 4568.

■ 12. Amend § 92.508 as follows:

■ a. Remove paragraph (a)(7)(i)(B);

■ b. Redesignate paragraph (a)(7)(i)(C) as paragraph (a)(7)(i)(B); and

■ c. Add paragraph (a)(7)(xi).

The addition reads as follows:

§ 92.508 Recordkeeping.

* * * * *

(a) * * *

(7) * * *

(xi) Documentation of actions undertaken to meet the requirements of 24 CFR part 75 which implements section 3 of the Housing Development Act of 1968, as amended (12 U.S.C. 1701u).

* * * * *

PART 93—HOUSING TRUST FUND

■ 13. The authority citation for part 93 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 12 U.S.C. 4568.

■ 14. Amend § 93.407 as follows:

■ a. Redesignate paragraphs (a)(5)(ii) through (ix) as paragraphs (a)(5)(iii) through (x);

■ b. Remove paragraph (a)(5)(i)(B);

■ c. Redesignate paragraph (a)(5)(i)(A) as paragraph (a)(5)(ii);

■ d. In newly redesignated paragraph (a)(5)(iv), remove ''24 part 35'' and add in its place ''24 CFR part 35''; and

■ e. Add paragraph (a)(5)(xi).

The addition reads as follows:

§ 93.407 Recordkeeping.

* * * * *

(a) * * *

(5) * * *

(xi) Documentation of actions undertaken to meet the requirements of 24 CFR part 75, which implements section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u).

* * * * *

CHAPTER I—OFFICE OF ASSISTANT SECRETARY FOR EQUAL OPPORTUNITY, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT [AMENDED]

■ 15. Under the authority of 42 U.S.C. 3535(d), in chapter I, remove the headings for subchapters A and B.

PART 135 [REMOVED]

■ 16. Remove part 135.

PART 266—HOUSING FINANCE AGENCY RISK–SHARING PROGRAM FOR INSURED AFFORDABLE MULTIFAMILY PROJECT LOANS

■ 17. The authority citation for part 266 continues to read as follows:

Authority: 12 U.S.C. 1707; 42 U.S.C. 3535(d).

§ 266.220 [Amended]

■ 18. Amend § 266.220(c) by removing ''; section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), as implemented by 24 CFR part 135''.

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

■ 19. The authority citation for part 570 continues to read as follows:

Authority: 12 U.S.C. 1701x, 1701 x–1; 42 U.S.C. 3535(d) and 5301–5320.

§ 570.487 [Amended]

■ 20. Amend § 570.487(d) by removing ''24 CFR part 135'' and adding in its place ''24 CFR part 75''.

§ 570.607 [Amended]

■ 21. Amend § 570.607(b) by removing ''24 CFR part 135'' and adding in its place ''24 CFR part 75''.

PART 576—EMERGENCY SOLUTIONS GRANTS PROGRAM

■ 22. The authority citation for part 576 continues to read as follows:

Authority: 12 U.S.C. 1701x, 1701 x–1; 42 U.S.C. 11371 *et seq.,* 42 U.S.C. 3535(d).

§ 576.407 [Amended]

■ 23. Amend § 576.407(a) by removing ''24 CFR part 135'' and adding in its place ''24 CFR part 75''.

PART 578—CONTINUUM OF CARE PROGRAM

■ 24. The authority citation for part 578 continues to read as follows:

Authority: 12 U.S.C. 1701x, 1701 x–1; 42 U.S.C. 11381 *et seq.,* 42 U.S.C. 3535(d).

§ 578.99 [Amended]

■ 25. Amend § 578.99 by removing ''federal'' in the section heading and adding in its place ''Federal'' and removing ''24 CFR part 135'' in paragraph (i) and adding in its place ''24 CFR part 75''.

PART 905—THE PUBLIC HOUSING CAPITAL FUND PROGRAM

■ 26. The authority citation for part 905 continues to read as follows:

Authority: 42 U.S.C. 1437g, 42 U.S.C. 1437z–2, 42 U.S.C. 1437z–7, and 3535(d).

§ 905.308 [Amended]

■ 27. Amend § 905.308(b)(10) by removing ''24 CFR part 135'' and adding in its place ''24 CFR part 75''.

PART 964—TENANT PARTICIPATION AND TENANT OPPORTUNITIES IN PUBLIC HOUSING

■ 28. The authority citation for part 964 continues to read as follows:

Authority: 42 U.S.C. 1437d, 1437g, 1437r, 3535(d).

§ 964.320 [Amended]

■ 29. Amend § 964.320 by removing ''24 CFR part 135'' and adding in its place ''24 CFR part 75''and removing ''24 CFR 135.7'' and adding in its place ''24 CFR 75.3''.

PART 983—PROJECT-BASED VOUCHER (PBV) PROGRAM

■ 30. The authority citation for part 983 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

§ 983.4 [Amended]

■ 31. Amend § 983.4 by removing the definition of ''Section 3—Training, employment and contracting opportunities in development''.

§ 983.154 [Amended]

■ 32. Amend § 983.154 by removing and reserving paragraph (c).

PART 1000—NATIVE AMERICAN HOUSING ACTIVITIES

■ 32. The authority citation for part 1000 continues to read as follows:

Authority: 25 U.S.C. 4101 *et seq.;* 42 U.S.C. 3535(d).

■ 33. Revise § 1000.42 to read as follows:

§ 1000.42 Are the requirements of Section 3 of the Housing and Urban Development Act of 1968 applicable?

No. Recipients shall comply with Indian preference requirements of section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5307(b)), or employment and contract preference laws adopted by the recipient's tribe in accordance with section 101(k) of NAHASDA.

Dated: March 29, 2019.

Matthew F. Hunter,

Assistant Deputy Secretary for Field Policy and Management.

[FR Doc. 2019–06495 Filed 4–3–19; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 75

[Docket No. FR–6085–N–02]

Section 3 Benchmarks for Creating Economic Opportunities for Low- and Very Low-Income Persons and Eligible Businesses

AGENCY: Office of the Assistant Deputy Secretary for Field Policy and Management, HUD.

ACTION: Notification of proposed benchmarks.

SUMMARY: Section 3 of the Housing and Urban Development Act of 1968, as amended by the Housing and Community Development Act of 1992 (Section 3), contributes to the establishment of stronger, more sustainable communities by ensuring that employment and other economic opportunities generated by Federal financial assistance for housing and community development programs are, to the greatest extent feasible, directed toward low- and very low-income persons, particularly those who are recipients of government assistance for housing. HUD is statutorily charged with the authority and responsibility to implement and enforce Section 3. Elsewhere in this issue of the **Federal Register**, HUD published a proposed rule that would amend the Section 3 regulations to, among other things, increase the impact of the Section 3 requirements, and streamline and update HUD's reporting and tracking requirements. The proposed rule includes a requirement that HUD set Section 3 benchmarks by publishing a notification, subject to public comment, in the **Federal Register**. The proposed rule provides that HUD will set benchmarks based on the number of Section 3 workers and a subset of Section 3 workers, defined as Targeted Section 3 workers. If a recipient complies with the statutory priorities regarding effort and meets the outcome benchmarks, HUD would presume the recipient is following Section 3 requirements, absent evidence to the contrary. These proposed outcome benchmarks are being published concurrently with the proposed rule so the public can comment on the proposed benchmarks and methodology for setting the benchmarks prior to adoption of the final rule and benchmarks.

DATES: *Comment Due Date.* June 3, 2019.

ADDRESSES: Interested persons are invited to submit comments regarding this document to the Regulations Division, Office of General Counsel, 451 7th Street SW, Room 10276, Department of Housing and Urban Development, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

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 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 comments, 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 two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying weekdays between 8 a.m. and 5 p.m. Eastern Time 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 through TTY by calling the Federal Relay Service at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT:

Alastair W. McFarlane, Director, Economic Development and Public Finance Division, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street SW, Room 8216, Washington, DC 20410; telephone 202–402–5845 (voice/TDD) (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the Federal Relay Service, at toll-free, 800–877–8339. General email inquiries regarding Section 3 may be sent to: *section3@hud.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 3 of the Housing and Urban Development Act of 1968 (Pub. L. 90–448, approved August 1, 1968) (Section 3) (12 U.S.C. 1701u) was enacted for the purpose of ensuring, to the greatest extent feasible, that economic opportunities generated by the expenditure of certain HUD financial assistance are directed to low- and very low-income persons, particularly those who receive Federal financial assistance for housing and those residing in communities where the financial assistance is expended. HUD issued Section 3 regulations through an interim rule published on June 30, 1994, at 59 FR 33880, and the regulations are codified in 24 CFR part 135. The Section 3 regulations at 24 CFR 135.30 currently require that Section 3 covered public and Indian housing programs and other HUD programs that are covered by Section 3 meet a numerical goal of 30 percent of the aggregate number of new hires for a 1-year period in order to meet a compliance safe harbor. For contracts awarded in connection with Section 3 projects and activities, the current rule also applies the following goals for each recipient, contractor, and subcontractor to commit to award to Section 3 business concerns: (1) At least 10 percent of the total dollar amount of all Section 3 covered contracts for building trades work for maintenance, repair, modernization, or development of public or Indian housing, or for building trades work arising in connection with housing rehabilitation, housing construction, and other public construction; and (2) at least 3 percent of the total dollar amount of all other Section 3 covered contracts. Based on HUD's experience with implementing the program over the 24 years that have passed since HUD promulgated the currently codified Section 3 regulations, HUD is proposing to issue new regulations to strengthen and streamline the Section 3 requirements.

HUD issued a proposed rule, found elsewhere in this issue of the **Federal Register**, that would replace the current 24 CFR part 135 regulations with new Section 3 regulations in 24 CFR part 75. The new regulations aim to make Section 3 goals and reporting more meaningful and more aligned with statutory requirements, and to make compliance easier for recipients. This proposed rule also includes new metrics for compliance safe harbors and provides that these benchmarks will be set by notification in the **Federal Register**. The rule separates out the new requirements and benchmarks by the type of funding, as follows:

(1) *Public housing program:* Subpart B, Additional Provisions for Public Housing Financial Assistance, covers development assistance provided pursuant to section 5 of the U.S. Housing Act of 1937 (1937 Act) and Operating Fund and Capital Fund assistance provided pursuant to section 9 of the 1937 Act, collectively; these are defined as public housing financial assistance in the proposed rule.

(2) *Other HUD programs:* Subpart C, Additional Provisions for Section 3 Projects, covers housing rehabilitation, housing construction, and other public construction projects assisted under HUD programs that provide housing and community development financial assistance when the amount of assistance to the project exceeds a threshold of $200,000, and is defined as a Section 3 project. This threshold will not apply to assistance from HUD's Lead Hazard Control and Healthy Homes programs.

As for new metrics, the rule provides that HUD will establish, through a **Federal Register** notification, Section 3 benchmarks by setting forth one or both of the following:

(1) The number of labor hours worked by Section 3 workers divided by the total number of labor hours worked by all workers in the recipient's fiscal year.

(2) The number of labor hours worked by Targeted Section 3 workers divided by the total number of labor hours worked by all workers in the recipient's fiscal year.

HUD also provides an alternative, titled Alternative 2, in the proposed rule that would provide for using new hires, as opposed to labor hours, to track Section 3 workers and Targeted Section 3 workers for public housing financial assistance (*i.e.,* public housing authorities (PHAs) and other recipients of public housing financial assistance). In the final rule, HUD will adopt either the use of labor hours, Alternative 1, or new hires, Alternative 2, for public housing financial assistance.

The proposed rule explains how HUD plans to determine these benchmarks, noting that it may establish a single nationwide benchmark for work performed by Section 3 workers and a single nationwide benchmark for work performed by Targeted Section 3 workers, or may establish multiple benchmarks based on geography, the type of public housing financial assistance, or other variables. The proposed rule also notes that in establishing the benchmarks, HUD may consider the industry averages worked by specific categories of workers or in different localities or regions; prior Section 3 reports by recipients; and any other factors HUD deems important. In establishing the Section 3 benchmarks, HUD would exclude professional services, which would be defined as non-construction services, including, but not limited to, contracts for legal services, financial consulting, accounting services, environmental assessment, architectural services, and civil engineering services. Lastly, HUD commits to updating the benchmarks no less frequently than once every three years through notice, subject to public comment, in the **Federal Register**.

HUD created the concept of a Section 3 worker and Targeted Section 3 worker so that HUD could track and set benchmarks to target selected categories of workers and to recognize the statutory requirements pertaining to contracting opportunities for business concerns employing low- and very-low income persons.

HUD would define a Section 3 worker for both public housing financial assistance and Section 3 projects as a worker that meets one of the following:

- The worker's income is below the income limit established by HUD;
- The worker lives in a qualified census tract; or
- The worker is employed by a Section 3 business concern.

HUD would define a Targeted Section 3 worker differently for public housing financial assistance and Section 3 projects. For public housing financial assistance, Targeted Section 3 workers would be:

- Workers employed by a Section 3 business concern;
- Current residents of public housing or Section 8 assisted housing;
- Residents of other projects managed by the PHA that is expending assistance; or
- Current YouthBuild participants.

For Section 3 projects, Targeted Section 3 workers would be:

- Workers employed by a Section 3 business concern;
- Section 3 workers living within the service area or neighborhood of the project; or
- Current YouthBuild participants.

HUD proposes to define a Section 3 business concern as a business concern that meets one of the following requirements:

- It is at least 51 percent owned by low- or very low-income persons;
- Over 75 percent of the labor hours performed for the business are performed by low- or very low-income persons; or
- It is a business at least 25 percent owned by current public housing residents or residents who currently live in Section 8-assisted housing.

For more information about the proposed rule, HUD refers readers to the proposed rule published elsewhere in this issue of the **Federal Register**.

II. This Document

This document proposes the benchmarks for both public housing financial assistance and Section 3 projects consistent with the proposed rule. HUD is seeking comment on both the benchmarks numbers themselves and the methodology for determining the benchmarks. HUD is proposing the same benchmarks for all public housing financial assistance and Section 3 projects. Once HUD has more data, it may determine whether different benchmarks are appropriate. The following benchmarks would apply:

Public Housing Financial Assistance

Alternative 1

For meeting the safe harbor in proposed § 75.13, PHAs and other recipients that certify to following the prioritization of effort in proposed § 75.9 and meet or exceed the following Section 3 benchmarks will be considered to have complied with requirements in proposed 24 CFR part 75, subpart B, in the absence of evidence to the contrary:

(1) Twenty-five (25) percent or more of the total number of labor hours worked by all workers employed with public housing financial assistance in the PHA's or other recipient's fiscal year are Section 3 workers;

$$\frac{\text{Section 3 Labor Hours}}{\text{Total Labor Hours}} = 25\%$$

and

(2) Five (5) percent or more of the total number of labor hours worked by all workers employed with public housing financial assistance in the PHA's or other recipient's fiscal year are Targeted Section 3 workers, as defined at proposed § 75.11.

$$\frac{\text{Targeted Section 3 Labor Hours}}{\text{Total Labor Hours}} = 5\%$$

Alternative 2

For meeting the safe harbor in proposed § 75.13, PHAs and other recipients that certify to following the prioritization in proposed § 75.9 and meet or exceed the following Section 3 benchmarks will be considered to have complied with requirements in proposed 24 CFR part 75, subpart B, in the absence of evidence to the contrary:

(1) Thirty (30) percent or more of the total number of new hires employed with public housing financial assistance in the PHA's or other recipient's fiscal year are Section 3 workers;

$$\frac{\text{Section 3 New Hires}}{\text{Total New Hires}} = 30\%$$

and

(2) Five (5) percent or more of the total number of new hires employed with public housing financial assistance in the PHA's or other recipient's fiscal year are Targeted Section 3 workers, as defined at proposed § 75.11.

$$\frac{\text{Targeted Section 3 New Hires}}{\text{Total New Hires}} = 5\%$$

Section 3 Project

For meeting the safe harbor in proposed § 75.23, recipients that certify to following the prioritization in proposed § 75.19 and meet or exceed the following Section 3 benchmarks will be considered to have complied with requirements in proposed 24 CFR part 75, subpart C, in the absence of evidence to the contrary:

(1) Twenty-five (25) percent or more of the total number of labor hours worked by all workers on a Section 3 project are Section 3 workers;

$$\frac{\text{Section 3 Labor Hours}}{\text{Total Labor Hours}} = 25\%$$

and

(2) Five (5) percent or more of the total number of labor hours worked by all workers on a Section 3 project are Targeted Section 3 workers, as defined at proposed § 75.21.

$$\frac{\text{Targeted Section 3 Labor Hours}}{\text{Total Labor Hours}} = 5\%$$

The Methodology

To determine the initial proposed benchmark figures, HUD looked at the total hours worked on a construction or development project, the total number of workers that would likely qualify as Section 3 workers, and the potential pool of Targeted Section 3 workers. For setting the total ratio for Section 3 workers/all total labor hours for those employed in on-site construction jobs, HUD considered workers in the construction trades employed by the construction industry (Industry-Occupation Matrix for Industry NAICS 230000 and Occupations in Construction and Extraction Summary level 47–0000). Although the construction industry employs a diversity of types of occupations (such as administration), only on-site jobs are covered by Section 3. Generally, construction trades are paid higher wages than the average occupation. For the purpose of analysis, HUD defines a low-income job as one earning no more than 80 percent of the median annual wage. This definition is consistent with HUD's definition of a low-income household, which is a household earning no more than 80 percent of the area median household income. The median annual wage for all occupations in the United States was $37,690 in 2017 according to the Occupational Employment and Wage Estimates by the Bureau of Labor Statistics (BLS); 80 percent of that is $30,152. The low-income estimate of $30,152 approximates the upper end of the wage distribution for Section 3 workers. HUD considers all occupations with an annual wage less than $30,152 as those that could be filled by someone who is low-income and meets the Section 3 requirements.

Data on occupations involved in on-site construction show that a very small fraction of occupations are characterized by a median less than the measure of low-income ($30,152). That the wages of construction occupations are higher than average suggest that Section 3 workers will not earn the industry's median wage. Instead, a Section 3 worker is likely to be paid a wage that is lower than the median wage (50th percentile) for most industries. Earning less than the median is reasonable for recent hires who have less skills and experience than the average worker. Most occupations offer a wide distribution of wages based on worker productivity and other factors such as location. For example, a construction laborer earns a median salary of $34,500, but can earn as much as $63,400 (90th percentile annual wages), or as little as $22,280 (10th percentile annual wages).

For the Section 3 employment goal to be attainable, the labor-hour threshold must be set at a level that is congruent with the labor market. Determining whether it is reasonable to expect there to be job openings for low-income workers (80 percent of median income across all occupations) requires examining the lower end of the wage distribution of the relevant industries. Whether Section 3 workers are to represent 25 percent of the labor hours completed will depend upon the 25th percentile level of wages.

DISTRIBUTION OF ANNUAL WAGES FOR FULL-TIME WORKERS

Industry	Occupation	10th percentile	25th percentile	Median	75th percentile	90th percentile
All	All	19,970	24,770	37,690	61,110	96,150
Residential Construction	All	24,590	32,200	43,730	61,580	88,950
Residential Construction	Construction and Extraction	25,130	32,000	41,430	56,610	74,300
Services to Buildings	All	18,830	21,610	26,790	35,690	49,060

Source: Bureau of Labor Statistics, May 2017 National Occupational Employment and Wage Estimates, United States.

The 25th percentile wage for construction occupations in the residential construction industry is $32,000, which is slightly above the low-income measure of $30,152. The 25 percent employment goal is achievable because there are enough low-income construction jobs in residential construction. To achieve this goal, however, will require a slight stretch. Either all of the low-income labor hours will have to be allocated towards Section 3 workers and/or a small portion of the jobs above the 25th percentile wage will have to be given to

Section 3 workers. Examples of low-income construction occupations include helpers, cleaners, construction laborers, landscapers, carpet installers, roofers, and floor sanders.

Section 3 applies to other activities than on-site construction employment, all of which should be evaluated in the same manner to ascertain whether there is sufficient demand for low-income labor. The most prominent is the Operating Fund for PHAs, accounting for over 40 percent of all Section 3 new hires in 2017. Section 3 workers for PHAs are likely to be employed in occupations within the ''Services to Buildings and Dwellings'' industry. Most of the employment in the services to buildings industry is in occupations with a median wage below the low-income annual wage. The lowest-income occupations include janitors, housekeepers, refuse collectors, receptionists, data entry keyers, landscapers, office clerks, and file clerks. Compared to the low-income measure of $30,152, the median (50th percentile) annual wage in building services is $26,790, and the 25th percentile wage is $21,610. The wage distribution for building services is more flexible than the one for on-site construction because the wage distribution for building services is centered around low-income jobs. The wage distribution of the building services industry allows PHAs to offer employment to workers with intermediate skills (as well as lower level) and to compensate them appropriately.

Based on the above wage distribution data for on-site construction and building services, HUD sets the threshold for Section 3 labor hours at 25 percent of all labor hours to encourage recipients, subrecipients, contractors, and subcontractors to hire more Section 3 workers for construction. In both industries, the 25th percentile annual wage for that industry is either close to or below the upper boundary for low-income.

For the new hire alternative for public housing financial assistance, HUD proposes that the initial threshold for Section 3 hires as a percentage of all hires would be 30 percent, which is a figure comparable to that in HUD's currently codified Section 3 regulations.

To establish a Targeted Section 3 benchmark for public housing financial assistance projects, HUD estimated the number of residents of public housing or Section 8 assisted housing, of current YouthBuild participants, and of workers employed by Section 3 business concerns. Excluding children, the elderly, and persons with disabilities, there are around 2.4 million potential workers living in public housing or Section 8 assisted housing across the country's 2,934 PHAs. Because small PHAs, those with less than 250 units, make up the majority of PHAs and because of their size would have a small number of potential workers, HUD believes that the majority of the 2.4 million potential workers would be concentrated at the larger PHAs, where approximately 2,000 potential workers per large PHA could be hired by recipients, subrecipients, contractors, or subcontractors. Another pool of workers is current YouthBuild workers. Currently, approximately 8,000 youth between the ages of 18 and 24 are selected to enroll in the YouthBuild program each year.[1] While some of these workers may be working on specific projects for YouthBuild and, thus, are not available to be hired as a Targeted Section 3 worker, the rule provides for current or previous YouthBuild workers; therefore, this number would be expanded. Lastly, the Targeted Section 3 worker for a Section 3 benchmark includes workers that are employed by Section 3 business concerns, regardless of where the business is located. Based on the data in HUD's Section 3 business Registry, there is an ample number of Section 3 business concerns. HUD, therefore, believes given the multitude of available workers that recipients, contractors, or subcontractors can find to meet the Targeted Section 3 benchmark, that 5 percent is a reasonable goal for the first Targeted Section 3 benchmark.

Targeted workers constitute one-fifth (5 percent/25 percent) of the proposed goals. To ensure that 5 percent of local workers is not a burdensome goal for employers, HUD refers to data on commuting times from the U.S. Census. For 5 percent to be easily attainable, the journey to work must be a short one for one-fifth of all workers. The travel time to work is less than 10 minutes for 12.7 percent of all workers; and less than 15 minutes for 26.3 percent of all workers. The distribution of travel times indicates that the Section 3 Targeted worker goal is attainable, but that the goal may require a slight stretch. However, a slight stretch is welcome given that the purpose of Targeted worker definition is to provide local employment to those workers who are low-income and typically have longer commutes.

[1] See *About YouthBuild,* YouthBuild.com, *https://www.youthbuild.org/about-youthbuild-usa* (last visited June 19, 2018).

TRAVEL TIME TO WORK, 2013–2017

Minutes	Percentage of workers	Cumulative percentage*
Less than 10 minutes	12.7	12.7
10 to 14 minutes	13.6	26.3
15 to 19 minutes	15.3	41.6
20 to 24 minutes	14.6	56.2
25 to 29 minutes	6.4	62.6
30 to 34 minutes	13.7	76.3
35 to 44 minutes	6.8	83.1
45 to 59 minutes	8.1	91.2
60 or more minutes	8.9	100.1
Mean Travel time (minutes)	26.4	

*Total is greater than 100 percent due to rounding of percentages.

Source: U.S. Census, 2013–2017 American Community Survey 5-Year Estimates.

As for Section 3 projects, HUD proposes the same fraction of 5 percent. HUD looked at nearly 3,000 past Community Development Block Grant program (CDBG) and HOME Investment Partnership Program (HOME) projects in diverse geographic regions with at least $200,000 in funding to estimate the number of potential Targeted Section 3 workers available for Section 3 projects. For those that fall into the first category, based on geographic proximity to the project site, HUD looked at the number of low-income persons and all persons living in qualified census tracts within the local area, and the percentage of population that is working age (to exclude the elderly and children). HUD data shows that a median of 4,627 potential Targeted Section 3 workers live in the local areas associated with the sample of housing and community development projects. HUD notes that the use of geographic proximity to define the local area means that there could be significant deviation among the number of Targeted Section 3 workers available for different projects. The number of potential Targeted Section 3 workers in the geographically diverse sample of CDBG and HOME projects ranged from a minimum under 500 to a maximum over 125,000. Targeted Section 3 workers for Section 3 projects also include current YouthBuild workers and workers employed by Section 3 business concerns to meet the Targeted Section 3 worker benchmark. While the estimated pool of potential Targeted Section 3 workers seems larger for Section 3 projects than for public housing financial assistance, HUD believes that given the large fluctuation of the number of available workers for Section 3 projects, the Section 3 project benchmark for Targeted Section 3 workers should initially also be 5 percent.

Dated: March 29, 2019.

Matthew F. Hunter,

Assistant Deputy Secretary for Field Policy and Management.

[FR Doc. 2019–06564 Filed 4–3–19; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF EDUCATION

34 CFR Chapter II

RIN 1855–AA14

[Docket ID ED–2018–OII–0062]

Proposed Priorities, Requirements, Definitions, and Selection Criteria—Expanding Opportunity Through Quality Charter Schools Program; Grants to Charter School Developers for the Opening of New Charter Schools and for the Replication and Expansion of High-Quality Charter Schools

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Proposed priorities, requirements, definitions, and selection criteria.

SUMMARY: The Assistant Secretary for Elementary and Secondary Education proposes priorities, requirements, definitions, and selection criteria for Grants to Charter School Developers for the Opening of New Charter Schools and for the Replication and Expansion of High-Quality Charter Schools (Developer grants) under the Expanding Opportunity Through Quality Charter Schools Program (CSP), Catalog of Federal Domestic Assistance (CFDA) numbers 84.282B and 84.282E, respectively. We may use one or more of these priorities, requirements, definitions, and selection criteria for competitions in fiscal year (FY) 2019 and later years. We take this action to support the opening of new charter schools (CFDA 84.282B) and the replication and expansion of high-quality charter schools (CFDA 84.282E) throughout the Nation, particularly those that serve *educationally disadvantaged students,* such as students who are *individuals from low-income families,* and students who traditionally have been underserved by charter schools, such as *Native American* students and students in *rural communities.*

DATES: We must receive your comments on or before May 6, 2019.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do 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 accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''Help.''
- *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments, address them to Katherine Cox, U.S. Department of Education, 400 Maryland Avenue SW, Room 3E207, Washington, DC 20202–5970.

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: Katherine Cox, U.S. Department of Education, 400 Maryland Avenue SW, Room 3E207, Washington, DC 20202–5970. Telephone: (202) 453–6886. Email: *charterschools@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Invitation to Comment: We invite you to submit comments regarding the proposed priorities, requirements, definitions, and selection criteria. To ensure that your comments have maximum effect in developing the notice of final priorities, requirements, definitions, and selection criteria, we urge you to identify clearly the proposed priority, requirement, definition, or selection criterion that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866, 13563, and 13771 and their overall requirement of reducing regulatory burden that might result from these proposed priorities, requirements, definitions, and selection criteria. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of this program.

During and after the comment period, you may inspect all public comments about the proposed priorities, requirements, definitions, and selection criteria by accessing *Regulations.gov*. You may also inspect the comments in person at 400 Maryland Avenue SW, Room 3E207, Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern Time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for the proposed priorities, requirements, definitions, and selection criteria. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Purpose of Program: The major purposes of the CSP are to expand opportunities for all students, particularly traditionally underserved students, to attend charter schools and meet challenging State academic standards; provide financial assistance for the planning, program design, and initial implementation of public charter schools; increase the number of high-quality charter schools available to students across the United States; evaluate the impact of charter schools on student achievement, families, and communities; share best practices between charter schools and other public schools; encourage States to provide facilities support to charter schools; and support efforts to strengthen the charter school authorizing process.

Developer grants are intended to support charter schools that serve early childhood, elementary school, or secondary school students by providing grant funds to eligible applicants for the opening of new charter schools (CFDA number 84.282B) and for the replication and expansion of high-quality charter schools (CFDA number 84.282E).

Program Authority: Title IV, part C of the Elementary and Secondary Education Act of 1965, as amended (ESEA) (20 U.S.C. 7221–7221j).

Proposed Priorities

This document contains seven proposed priorities.

Proposed Priority 1—Spurring Investment in Opportunity Zones

Background: Created under the Tax Cuts and Jobs Act (Pub. L. 115–97), opportunity zones are intended to promote economic development and job creation in distressed communities through preferential tax treatment for investors. Specifically, if an individual invests capital gains in an opportunity fund—*i.e.,* a vehicle established for the purpose of investing in property in an opportunity zone—the taxes the individual owes on those gains can be deferred and reduced.

Through this proposed priority, the Administration seeks to harness the power of opportunity zones to help increase the educational choices available to students in these communities. The Department would use this priority to encourage the opening of new charter schools and the replication and expansion of high-quality charter schools in opportunity zones and to reward charter school developers that are partnering with an opportunity fund, especially for the purpose of acquiring or constructing school facilities.

The Department would have flexibility to use either the priority's first area only or both of the priority's areas in a given competition and, with respect to the second area, may give applicants additional time prior to making an award to provide evidence of receipt of financial assistance from an opportunity fund. The Department recognizes that such additional time may be needed to enable an applicant to formalize a relationship with an opportunity fund. We anticipate, however, that we would provide additional time for this purpose only if the priority area is used in an absolute priority.

Proposed Priority: Under this priority, an applicant must address one or both of the following priority areas—

(a) Propose to open a new charter school or to replicate or expand a high-quality charter school in a qualified opportunity zone as designated by the Secretary of the Treasury under section 1400Z–1 of the Internal Revenue Code, as amended by the Tax Cuts and Jobs Act (Pub. L. 115–97); and

(b) Provide evidence in its application that it has received or will receive financial assistance from a qualified opportunity fund under section 1400Z–2 of the Internal Revenue Code, as amended by the Tax Cuts and Jobs Act, for one or more of the following, as needed to open or to replicate or expand the school:

(1) The acquisition (by purchase, lease, donation, or otherwise) of an interest (including an interest held by a third party for the benefit of the school) in improved or unimproved real property;

(2) The construction of new facilities, or the renovation, repair, or alteration of existing facilities;

(3) The predevelopment costs required to assess sites for purposes of subparagraph (1) or (2); and

(4) The acquisition of other tangible property.

In addressing paragraph (a) of this priority, an applicant must provide the census tract number of the qualified opportunity zone in which it proposes to open a new charter school or replicate or expand a high-quality charter school. A list of qualified opportunity zones, with census tract numbers, is available at *www.cdfifund.gov/Pages/Opportunity-Zones.aspx.*

In addressing paragraph (b) of this priority, an applicant must identify the qualified opportunity fund from which it has received or will receive financial assistance. The Department may, at its discretion, give applicants additional time to provide evidence of such assistance after the deadline for transmittal of applications. If the Department elects to give applicants additional time, we will announce in the notice inviting applications (NIA) the deadline by which such evidence must be provided.

Proposed Priority 2—Reopening Academically Poor-Performing Public Schools as Charter Schools

Background: The CSP authorizing statute includes a priority under the CMO grant competition for eligible entities that demonstrate success in working with schools identified by the State for comprehensive support and improvement under section 1111(c)(4)(D)(i) of the ESEA. In 2018, the Department undertook rulemaking to develop a final priority under the CMO grant competition that is based on that grant competition's statutory priority but would require that, in order to meet the priority, the applicant also would be required to use grant funds to support school improvement efforts by restarting an *academically poor-performing public school.* The priority included in this competition is almost identical to the final priority under the CMO grant competition.

We believe that the restart model (*i.e.,* reopening a low-performing traditional public school under the management of a charter school developer, or reopening a low-performing public charter school under the management of a different charter school developer) holds promise as a school improvement strategy, but data suggest that it has been underutilized.[1] Accordingly, the proposed priority is intended to help increase the frequency of implementation of the restart model. Like the CMO grant competition's final priority, the proposed priority also would require applicants to demonstrate past success through work with one or more *academically poor-performing schools* or schools previously designated as persistently lowest-achieving schools or priority schools (*i.e.,* schools identified for interventions under the former School Improvement Grant program or in States that exercised ''ESEA flexibility,'' respectively, under the ESEA, as amended by the No Child Left Behind Act of 2001 (NCLB)), including but not limited to direct experience reopening *academically poor-performing public schools* as charter schools.

In future Developer grant competitions that include this priority, we would encourage applicants to review CSP technical assistance materials pertaining to how an applicant may design an admissions lottery for an *academically poor-performing public school* that the applicant is proposing to restart. Under the most recent version of the CSP nonregulatory guidance, for example, a charter school receiving CSP funds could, if permissible under applicable State law, exempt from its lottery students who are enrolled in the *academically poor-performing public school* at the time it is restarted.

Proposed Priority: Under this priority, applicants must—

(a) Demonstrate past success working with one or more *academically poor-performing public schools* or schools that previously were designated as persistently lowest-achieving schools or priority schools under the former School Improvement Grant program or in States that exercised ESEA flexibility, respectively, under the ESEA, as amended by NCLB, including but not limited to direct experience reopening *academically poor-performing public schools* as charter schools; and

(b) Propose to use grant funds under this program to reopen an *academically poor-performing public school* as a charter school during the project period by—

[1] Hurlburt, S., Therriault, S.B., and Le Floch, K.C. (2012). School Improvement Grants: Analyses of State Applications and Eligible and Awarded Schools (NCEE 2012–4060). Washington, DC: National Center for Education Evaluation and Regional Assistance, Institute of Education Sciences, U.S. Department of Education.

(1) Replicating a high-quality charter school based on a successful charter school model for which the applicant has provided evidence of success; and

(2) Targeting a demographically similar student population in the replicated charter school as was served by the *academically poor-performing public school,* consistent with nondiscrimination requirements contained in the U.S. Constitution and Federal civil rights laws.

Proposed Priority 3—High School Students

Background: The CSP authorizing statute includes a priority under the CMO grant competition for eligible applicants that propose to expand or replicate high-quality charter schools that serve high school students. In addition, section 4310(2)(M) of the ESEA authorizes charter schools that serve postsecondary students to receive CSP funds. In 2018, the Department went through the rulemaking process to develop a final priority for the CMO grant competition based on that competition's statutory priority. The priority expanded upon that priority by also requiring that applicants replicate or expand charter high schools that offer programs and activities designed to prepare high school students for enrollment in postsecondary education institutions, which include those that offer one-year training programs that prepare students for gainful employment in a recognized occupation (as described in section 101(b)(1) of the Higher Education Act of 1965, as amended (HEA)) and support such students after high school graduation in persisting in college and attaining degrees and certificates.

The proposed priority included in this notice is almost identical to the CMO grant competition priority, as the Department believes the priority would complement broader efforts to increase postsecondary participation, attendance, persistence, and degree attainment among our Nation's high school graduates. In order to meet the priority, an applicant must describe how it will prepare students for postsecondary education and, drawing from the authority provided in section 4310(2)(M) of the ESEA, provide support for its graduates who enroll in institutions of higher education and certain one-year training programs that prepare students for gainful employment in a recognized occupation. In addition, applicants must establish one or more project-specific performance measures that will provide reliable information about the grantee's progress in meeting the objectives of the project.

Proposed Priority: (a) Under this priority, applicants must propose to—

(1) Open a new charter school or replicate or expand a high-quality charter school to serve high school students, including *educationally disadvantaged students;*

(2) Prepare students, including *educationally disadvantaged students,* in that school for enrollment in postsecondary education institutions through activities such as, but not limited to, accelerated learning programs (including Advanced Placement and International Baccalaureate courses and programs, dual or concurrent enrollment programs, and early college high schools), college counseling, career and technical education programs, career counseling, internships, work-based learning programs (such as apprenticeships), assisting students in the college admissions and financial aid application processes, and preparing students to take standardized college admissions tests; and

(3) Provide support for students, including *educationally disadvantaged students,* who graduate from that school and enroll in postsecondary education institutions in persisting in, and attaining a degree or certificate from, such institutions, through activities such as, but not limited to, mentorships, ongoing assistance with the financial aid application process, and establishing or strengthening peer support systems for such students attending the same institution.

(b) Applicants must propose one or more project-specific performance measures, including aligned leading indicators or other interim milestones, that will provide valid and reliable information about the applicant's progress in preparing students, including *educationally disadvantaged students,* for enrollment in postsecondary education institutions and in supporting those students in persisting in and attaining a degree or certificate from such institutions. An applicant addressing this priority and receiving a Developer grant must provide data that are responsive to the measure(s), including performance targets, in its annual performance reports to the Department.

(c) For purposes of this priority, postsecondary education institutions include institutions of higher education, as defined in section 8101(29) of the ESEA, and one-year training programs that meet the requirements of section 101(b)(1) of the HEA.

Proposed Priority 4—Rural Community

Background: We propose this priority to enable the Department to provide incentives for applicants to propose to open a new charter school or to replicate or expand a high-quality charter school in a *rural community.* There is too often a relative dearth of high-quality educational options for students in *rural communities,* and our experience implementing this and other discretionary grant programs has taught us that students in these communities often face unique obstacles to educational success. This proposed priority would allow the Department flexibility to provide an incentive for applicants proposing to open a new charter school or to replicate or expand a high-quality charter school in a *rural community,* including by evaluating such applications separately from applications proposing to open new charter schools or to replicate or expand high-quality charter schools in non-rural communities, thereby allowing for an ''apples-to-apples'' comparison.

To meet this priority, an applicant would need to propose to open a new charter school or to replicate or expand a high-quality charter school in a *rural community* or such a school in a non-rural community, depending on the Department's policy objectives in a given year and which prong of the priority the applicant is addressing.

This proposed priority would help ensure that students in *rural communities* have access to a range of educational options similar to that available to their peers in suburban and urban areas, and from which parents can select an option that best meets their child's needs.

Proposed Priority: Under this priority, applicants must propose to open a new charter school or to replicate or expand a high-quality charter school in—

(a) A *rural community;* or

(b) A community that is not a *rural community.*

Proposed Priority 5—Opening a New Charter School or Replicating or Expanding a High-Quality Charter School To Serve Native American Students

Background: We propose this priority to enable the Department to provide an incentive for applicants that propose to open a new charter school or to replicate or expand a high-quality charter school by conducting targeted outreach and recruitment in order to serve a *high proportion* of *Native American* students. We propose to define ''high proportion'' in a way that would enable the Department to

determine whether a new, replicated, or expanded charter school serves a *high proportion* of *Native American* students on a case-by-case basis, taking into consideration the unique factual circumstances of that school. The priority would allow applicants to receive priority for proposing to open a new charter school, or to replicate or expand a high-quality charter school, that serves Native Hawaiian and Native American Pacific Islander students, as well as students who are Indians (including Alaska Natives).

In order to meet the priority, an applicant would be required to provide a letter of support from one or more *Indian Tribes* or *Native American organizations* located within the area to be served by the new, replicated, or expanded charter school, and to meaningfully collaborate with the *Indian Tribes* or *Native American organizations* in a timely, active, and ongoing manner. In addition, the applicant would have to demonstrate that the new, replicated, or expanded charter school's mission and educational program will address the unique educational needs of students who are *Native Americans,* and that such school's governing board will have a substantial percentage of members who are members of *Indian Tribes* or *Native American organizations* located within the area to be served by the charter school. Generally, a school board with a percentage of members of *Indian Tribes* or *Native American organizations* that is comparable to the percentage of *Native American* students to be served would satisfy the substantial percentage requirement in this priority; however, there may be circumstances where a smaller or larger percentage of members from an *Indian Tribe* or *Native American organization* is appropriate.

Proposed Priority: Under this priority, applicants must—

(a) Propose to open a new charter school, or replicate or expand a high-quality charter school, that—

(1) Utilizes targeted outreach and recruitment in order to serve a *high proportion* of *Native American* students, consistent with nondiscrimination requirements contained in the U.S. Constitution and Federal civil rights laws;

(2) Has a mission and focus that will address the unique educational needs of *Native American* students, such as through the use of instructional programs and teaching methods that reflect and preserve *Native American language,* culture, and history; and

(3) Has or will have a governing board with a substantial percentage of members who are members of *Indian Tribes* or *Native American organizations* located within the area to be served by the new, replicated, or expanded charter school;

(b) Submit a letter of support from at least one *Indian Tribe* or *Native American organization* located within the area to be served by the new, replicated, or expanded charter school; and

(c) Meaningfully collaborate with the *Indian Tribe(s)* or *Native American organization(s)* from which the applicant has received a letter of support in a timely, active, and ongoing manner with respect to the development and implementation of the educational program at the charter school.

Proposed Priority 6—Low-Income Demographic

Background: This proposed priority is for applicants with experience serving concentrations of students who are *individuals from low-income families* and is intended to support efforts to increase the number of high-quality educational options available to such students, particularly in the Nation's high-poverty areas. We propose three subparts to this proposed priority, each of which would require that the schools the applicant operates or manages serve a specific minimum percentage of students who are *individuals from low-income families* over the course of the Developer grant project period. The Secretary would have flexibility to choose one or more of the subparts of this priority in a given competition. We believe such flexibility is necessary to enable the Secretary to accommodate the range of eligible applicants and schools that may need support in a given year.

Under the proposed priority, a charter school proposed to be opened, replicated, or expanded by an applicant would serve, for the duration of the grant period, a percentage of students who are *individuals from low-income families* that is comparable to the minimum percentage of such students established under the priority for a given year. While the priority is written in a manner that gives the Department flexibility to apply one, two, or all three poverty standards in a single competition, we do not anticipate applying more than one poverty standard in a single competition.

Proposed Priority: Under this priority, applicants must demonstrate one of the following—

(a) That at least 40 percent of the students across all of the charter schools the applicant operates or manages are *individuals from low-income families,* and that the applicant will maintain the same, or a substantially similar, percentage of such students across all of its charter schools during the grant period;

(b) That at least 50 percent of the students across all of the charter schools the applicant operates or manages are *individuals from low-income families,* and that the applicant will maintain the same, or a substantially similar, percentage of such students across all of its charter schools during the grant period; or

(c) That at least 60 percent of the students across all of the charter schools the applicant operates or manages are *individuals from low-income families,* and that the applicant will maintain the same, or a substantially similar, percentage of such students across all of its charter schools during the grant period.

Proposed Priority 7—Single School Operators

Background: Under this priority, we would give preference to applicants that currently operate a single charter school. We are including this priority to encourage applications from developers that currently operate a single charter school but seek to replicate or expand it. Through this priority, we hope to support successful single school operators to grow into charter management organizations that, in the future, can continue to replicate and expand their successful school models. This proposed priority also would allow the Department to evaluate applicants from single school operators separately from applicants that already operate more than one school, thereby allowing for an ''apples-to-apples'' comparison.

Proposed Priority: Under this priority, applicants must provide evidence that—

(a) The applicant currently operates one, and only one, charter school; or

(b) The applicant currently operates more than one charter school.

Types of Priorities

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to

which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Proposed Requirements

Background: Section 4305(a)(2) of the ESEA includes specific requirements applicable to the Developer grant competition. In addition to those requirements, section 4305(c) of the ESEA requires grants awarded to Developers to have the ''same terms and conditions as grants awarded to State entities under section 4303.'' As applicable, we intend to apply the requirements in section 4303(f) of the ESEA to Developer grants, in addition to the proposed application requirements, eligibility restrictions, and funding restrictions.

In general, the Department believes, based on past experience administering this program, that these proposed requirements are necessary for the proper consideration of applications for Developer grants and would increase the likelihood of success of applicants' proposed projects, thereby contributing to the efficient use of taxpayer dollars in expanding the high-quality educational options available to our Nation's students. In accordance with section 4305(c), these proposed requirements would not preclude the Department from applying other terms and conditions applicable to State entity grants to Developer grants in FY 2019 or future years.

Proposed Requirements: We propose the following requirements for this program. We may apply one or more of these requirements in any year in which this program is in effect.

Applicants for funds under this program must address one or more of the following application requirements:

(a) Describe the applicant's objectives in running a quality charter school program and how the program will be carried out.

(b) Describe the educational program that the applicant will implement in the charter school receiving funding under this program, including—

(1) Information on how the program will enable all students to meet the challenging State academic standards;

(2) The grade levels or ages of students who will be served; and

(3) The instructional practices that will be used.

(c) Describe how the applicant will ensure that the charter school that will receive funds will recruit, enroll, and retain students, including *educationally disadvantaged students,* which include children with disabilities and English learners, including the lottery and enrollment procedures that will be used for the charter school if more students apply for admission than can be accommodated, and, if the applicant proposes to use a weighted lottery, how the weighted lottery complies with section 4303(c)(3)(A) of the ESEA.

(d) Provide a complete logic model (as defined in 34 CFR 77.1) for the grant project. The logic model must include the applicant's objectives for implementing a new charter school or replicating or expanding a high-quality charter school with funding under this competition.

(e) Provide a budget narrative, aligned with the activities, target grant project outputs, and outcomes described in the logic model, that outlines how grant funds will be expended to carry out planned activities.

(f) If the applicant proposes to open a new charter school (CFDA number 84.282B) or proposes to replicate or expand a charter school (CFDA number 84.282E) that provides a single-sex educational program, demonstrate that the proposed single-sex educational programs are in compliance with title IX of the Education Amendments of 1972 (20 U.S.C. 1681, *et seq.*) (''Title IX'') and its implementing regulations, including 34 CFR 106.34.

(g) Provide the applicant's most recent available independently audited financial statements prepared in accordance with generally accepted accounting principles.

(h) For each charter school currently operated or managed by applicants under CFDA 84.282E for replication and expansion, provide—

(1) Information that demonstrates that the school is treated as a separate school by its authorized public chartering agency and the State, including for purposes of accountability and reporting under title I, part A of the ESEA;

(2) Student assessment results for all students and for each subgroup of students described in section 1111(c)(2) of the ESEA;

(3) Attendance and student retention rates for the most recently completed school year and, if applicable, the most recent available four-year adjusted cohort graduation rates and extended-year adjusted cohort graduation rates; and

(4) Information on any significant compliance and management issues encountered within the last three school years by the existing charter school being operated or managed by the eligible entity, including in the areas of student safety and finance.

(i) Provide—

(1) A request and justification for waivers of any Federal statutory or regulatory provisions that the eligible entity believes are necessary for the successful operation of the charter school to be opened or to be replicated or expanded; and

(2) A description of any State or local rules, generally applicable to public schools, that will be waived or otherwise not apply to the school that will receive funds.

(j) A description of how each school that will receive funds meets the definition of charter school under section 4310(2) of the ESEA.

Eligibility: Eligibility for a grant under this competition is limited to charter school developers in States that do not currently have a CSP State Entity grant (CFDA number 84.282A) under the ESEA. Eligibility in a State with a CSP State Educational Agency (SEA) grant (CFDA 84.282A) under the ESEA, as amended by NCLB, is limited to grants for replication and expansion [2] (CFDA 84.282E) and only if the Department has not approved an amendment to the SEA's approved grant application authorizing the SEA to make subgrants for replication and expansion.[3]

Funding Restriction: An applicant may only propose to support one charter school per grant application.

Proposed Definitions

We propose the following definitions for this program. We may apply one or more of these definitions in any year in which this program is in effect.

Background: In order to ensure a common understanding of the proposed priorities, requirements, and selection criteria, we propose definitions that are critical to the policy and statutory purposes of the Developer grant program. We propose these definitions in order to clarify expectations for eligible entities applying for Developer grants and to ensure that the review process for applications for Developer grants remains as transparent as possible. The proposed definition for *educationally disadvantaged students* is based on section 1115(c)(2) of the ESEA,

[2] The list of eligible States will be included in the NIA for this competition and will be updated at the time of publication of that notice.

[3] The list of these States will be included in the NIA for this competition and will be updated at the time of publication of that notice.

and the proposed definition for *Indian Tribe* is from section 6132(b)(2) of the ESEA. In addition, we are particularly interested in receiving feedback on the proposed definition of *rural community.*

Academically poor-performing public school means:

(a) A school identified by the State for comprehensive support and improvement under section 1111(c)(4)(D)(i) of the ESEA; or

(b) A public school otherwise identified by the State or, in the case of a charter school, its authorized public chartering agency, as similarly academically poor-performing.

Educationally disadvantaged student means a student in one or more of the categories described in section 1115(c)(2) of the ESEA, which include children who are economically disadvantaged, children with disabilities, migrant students, English learners, neglected or delinquent students, homeless students, and students who are in foster care.

High proportion, when used to refer to *Native American* students, means a fact-specific, case-by-case determination based upon the unique circumstances of a particular charter school or proposed charter school. The Secretary considers ''high proportion'' to include a majority of *Native American* students. In addition, the Secretary may determine that less than a majority of *Native American* students constitutes a ''high proportion'' based on the unique circumstances of a particular charter school or proposed charter school, as described in the application for funds.

Indian Tribe means a federally recognized or a State-recognized Tribe.

Individual from a low-income family means an individual who is determined by a State educational agency or local educational agency to be a child from a low-income family on the basis of (a) data used by the Secretary to determine allocations under section 1124 of the ESEA, (b) data on children eligible for free or reduced-price lunches under the Richard B. Russell National School Lunch Act, (c) data on children in families receiving assistance under part A of title IV of the Social Security Act, (d) data on children eligible to receive medical assistance under the Medicaid program under title XIX of the Social Security Act, or (e) an alternate method that combines or extrapolates from the data in items (a) through (d) of this definition.

Institution of higher education means an educational institution in any State that—

(a) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate, or persons who meet the requirements of section 484(d) of the HEA;

(b) Is legally authorized within such State to provide a program of education beyond secondary education;

(c) Provides an educational program for which the institution awards a bachelor's degree or provides not less than a two-year program that is acceptable for full credit toward such a degree, or awards a degree that is acceptable for admission to a graduate or professional degree program, subject to review and approval by the Secretary;

(d) Is a public or other nonprofit institution; and

(e) Is accredited by a nationally recognized accrediting agency or association, or if not so accredited, is an institution that has been granted preaccreditation status by such an agency or association that has been recognized by the Secretary for the granting of preaccreditation status, and the Secretary has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time.

Native American means an Indian (including an Alaska Native), as defined in section 6132(b)(2) of the ESEA, Native Hawaiian, or Native American Pacific Islander.

Native American language means the historical, traditional languages spoken by *Native Americans.*

Native American organization means an organization that—

(a) Is legally established—

(1) By Tribal or inter-Tribal charter or in accordance with State or Tribal law; and

(2) With appropriate constitution, by-laws, or articles of incorporation;

(b) Includes in its purposes the promotion of the education of Native Americans;

(c) Is controlled by a governing board, the majority of which is *Native American;*

(d) If located on an Indian reservation, operates with the sanction or by charter of the governing body of that reservation;

(e) Is neither an organization or subdivision of, nor under the direct control of, any *institution of higher education;* and

(f) Is not an agency of State or local government.

Rural community means a community that is served by a local educational agency that is eligible to apply for funds under the Small Rural School Achievement (SRSA) program or the Rural and Low-Income School (RLIS) program authorized under title V, part B of the ESEA. Applicants may determine whether a particular local educational agency is eligible for these programs by referring to information on the following Department websites. For the SRSA program: *www2.ed.gov/programs/reapsrsa/eligible16/index.html.* For the RLIS program: *www2.ed.gov/programs/reaprlisp/eligibility.html.*

Proposed Selection Criteria

Background: Based on past experience implementing the Developer grant competition and its predecessor competition, we believe that these additional criteria will be valuable tools for peer reviewers to evaluate the quality of Developer applications in future years.

Proposed selection criterion (a) ''Quality of the eligible applicant'' would only apply to applicants under CFDA number 84.282E for replication and expansion. Under this proposed selection criterion, the Department would consider the degree to which an applicant has demonstrated success in increasing student academic achievement, the degree to which the academic achievement results for *educationally disadvantaged students* served by the charter schools operated or managed by the applicant have exceeded the average academic achievement results for such students in the State, whether charter schools operated or managed by the applicant have been closed or have encountered statutory or regulatory compliance issues, and the strength of the applicant's non-academic results such as parent satisfaction, school climate, student mental health, civic engagement, and crime prevention and reduction. Further, we propose to incorporate into this criterion language from the ESEA definition of ''high-quality charter school'' that would enable reviewers also to consider any significant issues that an applicant's charter schools have encountered in the areas of financial or operational management and student safety. The Department believes that these proposed selection factors would align with the intent of the authorizing statute and would bolster our ability to select high-quality Developer applicants that propose to replicate or expand a high-quality charter school.

Proposed selection criterion (b) ''Significance of contribution in assisting *educationally disadvantaged students*'' would focus on the contribution the proposed project would make in expanding educational opportunities for *educationally disadvantaged students* and enabling

those students to meet challenging State academic standards. This proposed criterion would allow the Department to assess the extent to which each proposed project aligns with a major statutory purpose of the CSP: To expand opportunities for *educationally disadvantaged students.* This criterion would encourage applicants to discuss their plans for opening a new charter school, or replicating or expanding a high-quality charter school, that will recruit and enroll *educationally disadvantaged students.*

Proposed selection criterion (c) ''Quality of the continuation plan'' would focus on the applicant's plan for continuing to operate the charter school that would receive grant funds once those funds are no longer available. This criterion will enable reviewers to assess the strength of applicants' continuation plans and the extent to which the applicant is prepared to operate the charter school in a way that is consistent with the eligible applicant's application even after the grant performance period ends.

Proposed Selection Criteria: We propose the following selection criteria for evaluating an application under this program. We may apply one or more of these criteria in any year in which this program is in effect. In the NIA, we will announce the maximum possible points assigned to each criterion.

The Secretary will select eligible entities to receive grants under this program on the basis of the quality of such applications, after taking into consideration one or more of the following selection criteria:

(a) *Quality of the eligible applicant.*

In determining the quality of the eligible applicant, the Secretary considers the following factors:

(1) The extent to which the academic achievement results (including annual student performance on statewide assessments and annual student attendance and retention rates and, where applicable and available, student academic growth, high school graduation rates, postsecondary enrollment and persistence rates, including in college or career training programs, employment rates, earnings, and other academic outcomes) for *educationally disadvantaged students* served by the charter school(s) operated or managed by the applicant have exceeded the average academic achievement results for such students served by other public schools in the State.

(2) The extent to which one or more charter schools operated or managed by the applicant have closed; have had a charter revoked due to noncompliance with statutory or regulatory requirements; or have had their affiliation with the applicant revoked or terminated, including through voluntary disaffiliation.

(3) The extent to which one or more charter schools operated or managed by the applicant have had any significant issues in the area of financial or operational management or student safety, or have otherwise experienced significant problems with statutory or regulatory compliance that could lead to revocation of the school's charter.

(4) The extent to which the schools operated or managed by the applicant demonstrate strong results on measurable outcomes in non-academic areas such as, but not limited to, parent satisfaction, school climate, student mental health, civic engagement, and crime prevention and reduction.

(b) *Significance of contribution in assisting educationally disadvantaged students.*

In determining the significance of the contribution the proposed project will make in expanding educational opportunity for *educationally disadvantaged students* and enabling those students to meet challenging State academic standards, the Secretary considers the quality of the plan to ensure that the charter school the applicant proposes to open, replicate, or expand will recruit, enroll, and effectively serve *educationally disadvantaged students,* which include children with disabilities and English learners.

(c) *Quality of the continuation plan.*

In determining the quality of the continuation plan, the Secretary considers the extent to which the eligible applicant is prepared to continue to operate the charter school that would receive grant funds in a manner consistent with the eligible applicant's application once the grant funds under this program are no longer available.

Final Priorities, Requirements, Definitions, and Selection Criteria: We will announce the final priorities, requirements, definitions, and selection criteria in a document in the **Federal Register**. We will determine the final priorities, requirements, definitions, and selection criteria after considering public comments and other information available to the Department. This document does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This document does *not* solicit applications. In any year in which we choose to use one or more of these priorities, requirements, definitions, and selection criteria, we invite applications through a notice in the **Federal Register**.

Executive Orders 12866, 13563, and 13771

Regulatory Impact Analysis

Under Executive Order 12866, it must be determined whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

Under Executive Order 13771, for each new rule that the Department proposes for notice and comment or otherwise promulgates that is a significant regulatory action under Executive Order 12866, and that imposes total costs greater than zero, it must identify two deregulatory actions. For FY 2019, any new incremental costs associated with a new regulation must be fully offset by the elimination of existing costs through deregulatory actions. Because the proposed regulatory action is not significant, the requirements of Executive Order 13771 do not apply.

We have also reviewed this proposed regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that

their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing these proposed priorities, requirements, definitions, and selection criteria only on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that would maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action would not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

We believe that the benefits of this regulatory action outweigh any associated costs, which we believe would be minimal. While this action would impose cost-bearing requirements on participating Developers, we expect that Developer applicants would include requests for funds to cover such costs in their proposed project budgets. We believe this regulatory action would strengthen accountability for the use of Federal funds by helping to ensure that the Department awards CSP grants to Developers that are most capable of expanding the number of high-quality charter schools available to our Nation's students.

Paperwork Reduction Act of 1995

The proposed priorities, requirements, and selection criteria contain information collection requirements that are approved by OMB under OMB control number 1894–0006; the proposed priorities, requirements, and selection criteria do not affect the currently approved data collection.

Regulatory Flexibility Act Certification: The Secretary certifies that this proposed regulatory action would not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration (SBA) Size Standards define proprietary institutions as small businesses if they are independently owned and operated, are not dominant in their field of operation, and have total annual revenue below $7,000,000. Nonprofit institutions are defined as small entities if they are independently owned and operated and not dominant in their field of operation. Public institutions are defined as small organizations if they are operated by a government overseeing a population below 50,000.

Participation in this program is voluntary and limited to charter school developers seeking funds to help open a new charter school or replicate or expand a high-quality charter. The Department anticipates that approximately 50 developers will apply for Developer grants in a given year and estimates that approximately half of these developers will be small entities. For this limited number of small entities, any cost-bearing requirements imposed by this regulatory action can be defrayed with grant funds, as discussed in the *Regulatory Impact Analysis.*

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: April 1, 2019.

Frank T. Brogan,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2019–06584 Filed 4–3–19; 8:45 am]

BILLING CODE 4000–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 20

[PS Docket No. 07–114; FCC 19–20]

Wireless E911 Location Accuracy Requirements

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) proposes to revise its rules to require Commercial Mobile Radio Service providers to deliver accurate vertical location information to Public Safety Answering points consistent with a metric of plus or minus three meters for wireless 911 calls placed from indoors. The Commission seeks comment on this proposal as well as on alternatives to improve vertical location accuracy for

wireless 911 calls made from multi-story buildings.

DATES: Comments are due on or before May 20, 2019 and reply comments are due on or before June 18, 2019.

ADDRESSES: You may submit comments, identified by PS Docket No. 07–114 by any of the following methods:

• *Federal Communications Commission's website: http://www.fcc.gov/ecfs/.* Follow the instructions for submitting comments.

• *Mail:* Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

• *People with Disabilities:* Contact the Commission to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Brenda Boykin, Policy and Licensing Division, Public Safety and Homeland Security Bureau, (202) 418–2062 or via email at *Brenda.Boykin@fcc.gov;* Nellie Foosaner, Policy and Licensing Division, Public Safety and Homeland Security Bureau, (202) 418–2925 or via email at *Nellie.Foosaner@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commissions Fourth Further Notice of Proposed Rulemaking in PS Docket No. 07–114, released on March 18, 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 online at *www.fcc.gov.*

Paperwork Reduction Act

This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

▪ Electronic Filers: Comments may be filed electronically using the internet by accessing the ECFS: *http://apps.fcc.gov/ecfs/.*

▪ Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

▪ All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW, Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.

▪ Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.

▪ U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW, Washington DC 20554.

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).

The proceeding this Notice initiates 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.

I. Introduction

1. Since the Commission first adopted its wireless Enhanced 911 (E911) location accuracy rules in 1996, the wireless landscape has undergone major changes. In 2018 the number of Americans with smartphones rose to 77%, up from just 35% in Pew Research Center's first survey of smartphone ownership conducted in 2011. As the adoption of cellphones and smartphones has skyrocketed, they have become an indispensable tool to protect consumers' health, property, and wellbeing, and many Americans are now relying on mobile phones as their only phones. Consumers make 240 million calls to 911 each year, and in many areas 80% or more of these calls are from wireless phones. For both first responders and consumers, the capability to locate wireless 911 callers quickly and accurately is of critical importance regardless of where the call originates.

2. To ensure that first responders and Public Safety Answering Points (PSAPs) can find 911 callers quickly and accurately when a consumer calls from a multi-story building, we propose a vertical, or z-axis, location accuracy metric of plus or minus 3 meters relative to the handset for each of the benchmarks and geographic requirements previously established in the Commission's E911 wireless location accuracy rules. This proposed metric will more accurately identify the floor level for most 911 calls, reduce emergency response times, and save lives.

II. Background

3. In the 2014 Third Further Notice of Proposed Rulemaking in this proceeding, the Commission proposed measures and timeframes to improve location accuracy for wireless E911 calls originating indoors, including, among others, a 3-meter z-axis metric for 80% of such calls. In the 2015 Fourth Report and Order in this proceeding, the Commission established benchmarks and timetables for the deployment of z-axis technology or dispatchable location (which includes a vertical location component) in the top 50 Cellular Market Areas, but deferred a decision on a specific z-axis metric until it received additional testing data. Specifically, the Commission required the four nationwide Commercial Mobile Radio Service (CMRS) providers to establish a test bed to develop a proposed z-axis accuracy metric and to submit the proposed metric to the Commission for approval within 3 years (*i.e.,* by August 3, 2018). The Commission stated that the proposal would be placed out for public comment.

4. On August 3, 2018, CTIA submitted the ''Stage Z Test Report'' (Report or Stage Z Test Report) on behalf of the four nationwide CMRS providers. According to the Report, Stage Z testing sought to assess the accuracy of solutions that use barometric pressure sensors in the handset for determining altitude in support of E911. Two vendors, NextNav LLC (NextNav) and Polaris Wireless, Inc. (Polaris), participated in Stage Z. The test results showed that in 80% of NextNav test calls, vertical location was identified to a range of 1.8 meters or less, while 80% of Polaris test calls yielded a vertical accuracy range of 4.8 meters or less. The Report noted that Polaris' performance ''could likely be significantly improved should a more robust handset barometric sensor calibration approach [than that used in the test bed] be applied.''

5. In its August 3, 2018, cover letter submitting the Report, CTIA stated that the test results provided ''helpful insight'' into the state of z-axis technologies, but that ''significant questions remain about performance and scalability in live wireless 9–1–1 calling environments.'' On behalf of the four nationwide wireless providers, CTIA therefore proposed a z-axis metric of ''+/− 5 meters for 80% of fixes from mobile devices capable of delivering barometric pressure sensor-based altitude estimates.'' CTIA also stated that further testing of vertical location technologies could yield results to validate adoption of a more accurate z-axis metric.

6. On September 10, 2018, the Public Safety and Homeland Security Bureau (Bureau) released a Public Notice seeking comment on the Report and the carriers' proposed z-axis metric. The Public Notice sought to gather information that would inform the Bureau's recommendations to the Commission concerning next steps in the development of the z-axis accuracy metric contemplated by the Fourth Report & Order. Fourteen entities filed comments and reply comments.

7. Public safety organizations unanimously opposed CTIA's proposed 5-meter metric as too imprecise to identify a caller's floor level. Some public safety organizations expressed support for a 3-meter metric, while others encouraged the Commission to adopt a 2-meter metric. NextNav and Polaris asserted that they could meet a 3-meter metric for 80% of wireless indoor calls within the prescribed timeframes.

8. In their initial comments, CTIA and some nationwide CMRS providers argued that the Commission should defer setting a more aggressive z-axis metric than 5 meters pending further testing. In a December 2018 ex parte filing, however, CTIA and all four nationwide CMRS providers revised their recommendation. These parties recognized ''that public safety representatives have encouraged the Commission to adopt a more aggressive Z-Axis metric of ±3 meters in the near term.'' While continuing to stress the importance of further testing, CTIA and the four providers stated that ''certainty as to the Z-Axis metric in the near term, whether via an Order or expeditiously seeking public comment, may help advance the development process necessary to meet the 2021 and 2023 vertical location accuracy benchmarks in the Fourth Report & Order.''

9. Herein, we take steps to build on the Commission's adoption of the Fourth Report and Order by proposing a metric for the z-axis compliance standard for wireless 911 calls that is available to those providers that do not choose the dispatchable location compliance standard for vertical location accuracy.

III. Discussion

10. Given the current state of the record, we believe it is appropriate to propose a z-axis metric based on a 3-meter standard. This will provide the final element of the Commission's existing indoor location accuracy regime, which already includes a timetable for CMRS providers to deliver vertical location information by deploying either dispatchable location or z-axis technology in specific geographic areas. Our proposed z-axis metric will provide certainty to all parties and establish a focal point for further testing, development, and implementation of evolving z-axis location technologies. To ensure a complete and comprehensive record on this issue, we seek comment on our proposal as discussed below.

A. Floor Level Accuracy

11. We propose a z-axis metric of 3 meters relative to the handset for 80% of wireless E911 calls for each of the benchmarks and geographic requirements previously established in the Commission's E911 wireless location accuracy rules. To certify compliance with this proposed requirement, the caller's handset should be located within 3 meters above or below the vertical location provided by the phone for 80% of indoor wireless calls to 911, as demonstrated in the test bed. Under our proposal, we would amend Section 20.18 of the Commission's rules to require that by April 3, 2021, nationwide CMRS providers must deploy in each of the top 25 Cellular Market Areas either dispatchable location or z-axis technology in compliance with the 3-meter metric. In Cellular Market Areas where z-axis technology is used, nationwide CMRS providers must deploy z-axis technology to cover 80% of the Cellular Market Area population. By April 3, 2023, these requirements would be expanded to cover each of the top 50 Cellular Market Areas. Non-nationwide CMRS providers that serve any of the top 25 or 50 Cellular Market Areas would continue to have an additional year to meet each of these benchmarks in the relevant Cellular Market Area.

12. We seek comment on our proposed 3-meter metric. We tentatively agree with commenters responding to the Stage Z Test Report who assert that

3 meters will provide sufficient accuracy to identify the caller's floor level in most cases. For example, IAFF comments that the Commission should require vertical location information that provides true floor level accuracy, ''*i.e.,* no more than 3 meters.'' NENA states that ''[c]itizens and public safety require, in the absence of a dispatchable location solution, a z-axis accuracy benchmark of +/−3 meters.'' The Texas 911 Entities assert that a metric greater than 3 meters for 80% of calls ''would not satisfy the critical requirements of public safety.'' We acknowledge that a 3-meter metric is not always certain to yield floor level accuracy. If the indoor wireless caller's handset is located at the vertical center of a floor with an average height of 3.1 to 3.9 meters, the margins of a 3-meter metric allow for a variance of up to six meters, which would extend the search range to one floor above and one floor below the location of the handset. Nevertheless, we believe this search range will significantly narrow the scope of the search and can provide a reasonable basis for identifying the correct floor in most cases. We seek comment on this tentative conclusion. Do commenters agree that the metric should be set at 3 meters? If not, what vertical location metric should the Commission adopt, and why?

13. We also tentatively conclude that a 5-meter metric should not be adopted because the record indicates it would not yield the floor level accuracy that first responder commenters consider necessary. APCO states that a 5-meter metric ''translates to a range of up to two floors below, or up to two floors above, the actual floor where a 911 caller may be located, and some lesser degree of accuracy for one in five calls to 911.'' APCO and NENA also assert that adopting a metric of 5 meters would undermine incentives for CMRS providers to invest in the development of more accurate z-axis solutions. We seek comment on our tentative conclusion.

14. We also seek comment on other elements of the proposed metric. Should the metric apply to 80% of wireless calls? If not, what percentage of calls is appropriate? CTIA's proposed metric would apply only to ''mobile devices capable of delivering barometric pressure sensor-based altitude estimates.'' Should the z-axis metric apply only to calls from such devices, only devices manufactured after a date certain, or should it apply to wireless calls from all mobile devices, as we propose? Additionally, NPSTC asserts that reporting vertical location information as height above ground level (AGL) would be preferable to height above mean sea level (MSL) which is how carriers' data would otherwise be provided by default. Should the Commission specify that CMRS providers must report z-axis information as AGL, as NPSTC suggests, or are there advantages to keying height estimates to MSL? Should the Commission require CMRS providers to identify the floor level when reporting z-axis information, as suggested by APCO? What would be the technical and/or operational issues in requiring CMRS providers to provide either AGL height or floor level information? Should the Commission require all CMRS providers to provide the same type of z-axis information (*e.g.,* MSL, AGL, or floor level) to avoid potential confusion at the PSAP? Alternatively, should we decline to specify this level of detail so that entities developing z-axis solutions have more flexibility?

B. Technical Feasibility

15. We tentatively conclude that our proposed 3-meter z-axis metric is technically feasible under the timeframes established in the Fourth Report and Order.

16. The test bed results show that in 80% of NextNav test calls, vertical location was identified to a range of 1.8 meters or less. NextNav achieved a vertical accuracy within 2 meters for 67% of test calls and within 3 meters for 90% of test calls in the dense urban, urban, and suburban morphologies. NextNav also achieved a vertical accuracy within 2 meters for 80% of test calls for every handset tested. According to NextNav, these results ''were consistent across age of handsets, with the oldest devices (2016 models) performing identically to the newest (2018).'' NextNav asserts that the results demonstrate reasonable consistency between handsets, weather, building types, environments, and time of day and that they demonstrate ''the efficacy of the overall altitude determination system (<1m @ 80%).''

17. In addition, Polaris states that it was able to achieve aggregate accuracy performance of 2.8 meters for 80% of test calls by using additional available location data to recalibrate and refine its Stage Z data. This also supports our tentative conclusion in favor of a 3-meter metric. Polaris also indicates that in a real-world deployment its solution would use an active compensation correction model that operates in an application running continuously in the background of the device. As stated by Dr. R. Michael Buehrer of Virginia Tech, we also expect that this calibration process would be at least as accurate as the limited (once per month) calibration process Polaris used in reprocessing its Stage Z data. Accordingly, we tentatively conclude that Polaris' reprocessing of the data presents a reasonably accurate picture of the capabilities of its solution. We seek comment on this view.

18. Additionally, we are encouraged that entities outside the test bed have reported on technologies that may be able to achieve an equivalent degree of vertical location accuracy, and in this respect, we note that our rules do not require the use of a particular technology to achieve the necessary metric. For instance, on September 18, 2018, Google announced the launch of its Emergency Location Service in the United States. According to Google, Emergency Location Service is ''a supplemental service that sends enhanced location directly from Android handsets to emergency services when an emergency call is placed.'' Emergency Location Service works on ''99 percent of Android devices (version 4.0 and above).'' Emergency Location Service is part of the Android operating system and does not require any special hardware or updates. Regarding vertical location accuracy, Google states that it is working to provide accurate altitude and floor location and ''improve [Emergency Location Service] location quality, especially for challenging locations, such as urban canyons and indoors.''

19. We recognize that some public safety commenters urge us to adopt a 2-meter metric, which would increase the likelihood of providing floor-level accuracy. However, we believe it is not yet established that such a metric is technically achievable on a consistent basis, although it may become achievable in the long term as technology continues to evolve. While NextNav's test bed results demonstrate that its solution can achieve an accuracy of 1.8 meters or less for 80% of test calls overall, it could only achieve an accuracy of 2.5 meters or less for 80% of test calls in the dense urban morphology, where calls from multi-story buildings are most likely to occur. Similarly, even after reprocessing its data, Polaris' solution yielded only 2.8 meters or less for 80% of test calls. Because the existing record does not indicate that 2-meter accuracy is currently achievable by either vendor in the dense urban morphology, we tentatively conclude that it would be premature to adopt a 2-meter metric. We believe, however, that our proposed 3-meter metric will encourage CMRS providers to work with NextNav, Polaris, and emerging location and

device vendors to achieve more precise vertical location accuracy solutions. We seek comment on this view.

C. Testing

20. We propose to adopt a 3-meter z-axis metric instead of deferring the matter for further testing. Although CTIA initially maintained that additional testing was needed before a metric could be adopted, it has since taken the opposite view. Additionally, vendors' comments suggest that the 3-meter metric is technically feasible, and public safety commenters acknowledge that such a metric, while not as precise as they might like, would nevertheless be a worthwhile step to take. Although we tentatively conclude that the benefits of further testing are insufficient to warrant any more delay in the progress of this proceeding, to the extent that the proponents of additional testing conduct tests or studies that yield more accurate and efficient vertical location solutions, we encourage these stakeholders to file them in this docket. We observe that CTIA recently announced that in July 2019, the test bed will begin the next round of z-axis testing, which CTIA has designated as ''Stage Za.'' We encourage all technology vendors that are developing potential z-axis solutions to participate in Stage Za. We note, however, that in the interest of providing certainty in the near term to all parties, the Commission envisions proceeding on this rulemaking while additional testing occurs.

21. We also tentatively conclude based on our own assessment of the Report that the limitations on testing described therein do not preclude us from adopting a 3-meter metric without requiring additional testing. We seek comment on this tentative conclusion.

22. For example, in Stage Z, Chicago was added as a test region to provide a more extreme cold-weather environment for evaluating z-axis technologies, but NextNav was unable to test there. NextNav also did not test its solution in rural morphologies. We do not believe that the lack of NextNav test data in either environment is a sufficient reason to delay consideration of a z-axis metric.

23. In particular, with respect to extreme cold-weather testing, the Report states that very cold weather was not available during testing and that this is likely because the test campaign started in late February. Accordingly, the test results would not have been conclusive even if NextNav had participated. In addition, if we were to require additional cold-weather testing, it could not be scheduled before next winter, which would entail at least a year's delay in adopting a metric.

24. Similarly, we do not believe that the absence of NextNav test data in rural morphologies warrants a delay in our consideration of a z-axis metric. The Report notes that the rural morphology is ''the sparsest environment overall'' and is mostly residential, with most structures between 1 and 2 stories high. Moreover, the Commission's vertical location accuracy requirements apply only to the top 50 Cellular Market Areas, which are most likely to feature the urban and dense urban morphologies. In these morphologies, the test bed shows that NextNav's solution would meet a 3-meter metric. Additionally, NextNav's technology was tested for vertical accuracy in rural areas during the original CSRIC Test Bed conducted in 2012, and NextNav's results from that testing fell within 3 meters for 80% of all calls.

25. We also do not believe that testing of additional devices, such as older and lower-end devices, is needed prior to adoption of a z-axis metric. NextNav and Polaris each tested six handsets, for a total of twelve handsets, in Stage Z. The Report states that handsets were selected ''to ensure variety between sensor manufacturers, the age of handsets (within limits) and their overall use characteristics,'' and that the handsets used in testing were ''the same production-ready handsets sold by wireless carriers and available to the general public'' and did not contain any hardware modification that would favor these handsets over any commercially available handsets. NextNav points out that the Stage Z results showed a high level of consistency between different models of handsets and that these results were consistent with the results of prior independent tests conducted on its technology. Although we encourage additional testing on a greater variety of devices, we believe that a sufficient variety of devices have been tested to support moving forward with our proposed 3-meter metric at this time. We seek comment on this assessment. We seek comment on whether the proposed 3-meter z-axis metric will provide adequate vertical location accuracy protection for consumers who participate in the Commission's Lifeline program. We seek comment on the extent to which mobile phones provided to consumers as part of the Lifeline program have the capability, through barometric pressure sensors or other means, to be located within a 3-meter z-axis metric. We also seek comment on how to ensure that vertical location protections extend to and include users of the Lifeline program. We also seek comment on the potential turnover rates for wireless handsets and the features of devices likely to be available and in use by the compliance dates established in our rules. Those data points would influence the extent to which difficulties in achieving the metric over older and lower-end devices may pose an impediment to meeting the proposed requirements.

D. Deployment

26. We believe our proposed 3-meter z-axis metric will support the development of scalable vertical location solutions that can be deployed in time to meet the carriers' 2021 and 2023 deadlines. To the extent that CMRS providers elect to use solutions that rely on barometric pressure readings, nearly all smartphones on the market appear to be equipped with barometric pressure sensors. In addition, both NextNav and Polaris state that calibration of the barometric sensors in their z-axis solutions would be software-based and thus would scale readily for widespread use. Polaris and NextNav also state that industry standards necessary to implement the barometric sensor-based solutions tested in Stage Z are already adopted and that implementation of these standards is in the hands of carriers and device manufacturers. Based on these comments, we believe barometric sensor-based solutions are likely to be scalable and can be made readily available to wireless consumers within the timeframes required by the rules. We seek comment on this assessment and its underlying factual assumptions.

27. We also seek comment on the potential for development and deployment of other new or emerging vertical location solutions that could be used to meet the proposed z-axis metric. The Commission has previously recognized that no single technological approach will solve the challenge of indoor location, and it adopted requirements applicable to CMRS providers that are technically feasible and technologically neutral ''so that providers can choose the most effective solutions from a range of options.'' We continue to believe that this approach should guide the adoption of any metric in this proceeding. CTIA states that other vertical location technologies and vendors will likely be ready for testing in 2019. We seek comment on the potential for widespread deployment and adoption of these or other alternatives within the timeframes required by the rules, as well as their likely performance in real-world conditions. Are there issues associated with implementing these solutions into

wireless network systems and production mobile devices, or scaling them for widespread use?

28. We also seek comment on whether we should consider accelerating or otherwise altering the deployment timelines within the rules. Is a 3-meter metric achievable more quickly than the current 2021 and 2023 deadlines? If so, when should these deadlines be set? These deadlines also pertain to the carriers' option of using dispatchable location for vertical location accuracy. Must the timetables be adjusted for both options? Can CMRS providers achieve dispatchable location and complete work on the NEAD on an accelerated timeframe? If not, should the Commission decouple the choice of deploying z-axis technology from dispatchable location, and how would bifurcating CMRS providers' technology choice impact CMRS providers' incentives to deploy dispatchable location and complete work on the NEAD? If the Commission adopts a more stringent metric such as floor level or a +/− 2-meter vertical location standard, is it achievable within the current timeframes or would it take longer than the current timetable in the rules? Is it feasible to adopt both a more precise metric and to shorten compliance timetables? How should the Commission address the timeframes applicable to non-nationwide CMRS providers? How would changing the existing timeframes impact the compliance regime for vertical location accuracy?

E. Z-Axis Data Privacy and Security

29. We seek comment on the appropriate data privacy and security framework for z-axis data. In 2015 the Commission established rules governing CMRS provider usage of the National Emergency Address Database (NEAD). In doing so, the Commission stated that ''certain explicit requirements on individual CMRS providers are necessary to ensure the privacy and security of NEAD data and any other information involved in the determination and delivery of dispatchable location.'' In the same Order the Commission required that, ''as a condition of using the NEAD or any information contained therein to meet our 911 location requirements, and prior to use of the NEAD, CMRS providers must certify that they will not use the NEAD or associated data for any purpose other than for the purpose of responding to 911 calls, except as required by law.'' We seek comment on whether use of z-axis data should be limited to 911 calls except as otherwise required by law and if such a limitation should be implemented and codified in a manner similar to the limitations applicable to the NEAD described above.

F. Comparison of Benefits and Costs

30. We now seek comment on which z-axis metric would allow us to achieve the anticipated level of benefits in the most cost-effective manner. Specifically, because the alternative metrics have an effect on both costs and benefits, we seek comment on how the benefits and costs of the proposed z-axis metric of 3 meters for 80% of calls compares to the benefits and costs of alternative metrics. We seek comment on the expected number of lives saved by adopting a 3-meter metric, versus a 2-meter or 5-meter metric. We also seek comment on the expected number of lives that would be saved if we required CMRS providers to identify floor level when reporting z-axis information. In the Fourth Report and Order, the Commission concluded that the location accuracy rules, including the z-axis accuracy metric, would improve emergency response times, which, in turn, would improve patient outcomes and save lives. The Commission found that the location accuracy improvements that it adopted had the potential to save approximately 10,120 lives annually at a value of $9.1 million per statistical life, for an annual benefit of approximately $92 billion or $291 per wireless subscriber. The Commission characterized this $92 billion as an annual benefit floor value because it also expected substantial, unquantifiable benefits from the reduction of human suffering and loss of property. The Commission further found that the costs of implementing the available solutions to achieve the indoor wireless location accuracy standards were far less than the $92 billion benefit floor, with the costs further declining as demand grew.

31. We now seek comment on how the benefits and costs of the proposed z-axis metric of 3 meters for 80% of calls compares to the benefits and costs of alternative metrics. We tentatively conclude that a z-axis metric of 3 meters for 80% of calls strikes the best balance between benefits and costs. As noted above, some public safety commenters identify a 3-meter metric as providing sufficient accuracy to identify the caller's floor level in most cases. Accordingly, a 3-meter metric would manifest the benefits of location accuracy described in the Fourth Report and Order. The record contains evidence that supports a finding that the costs of implementing a 3-meter metric are themselves low, at least on a per-handset basis. NextNav asserts that its z-axis solution, which requires only software changes to be made to each handset, could be made available for a nominal cost that amounts to significantly less than a penny per month per handset and would impose no incremental cost burdens on new handsets. Polaris states that its z-axis solution is ''objectively affordable'' because it is software-based, does not require hardware in networks or markets, and ''does not require anything special in devices beyond implementation of adopted 3GPP and OMA standards.'' Polaris' solution also is ''instantly available and deployable throughout a carrier's nationwide network.'' As the Commission noted in the Fourth Report and Order, we continue to expect that these costs will decline as demand grows.

32. We tentatively conclude that the value of a 3-meter metric exceeds that of a 5-meter standard because a 5-meter metric would result in a significant reduction in the benefits described above. As commenters have indicated, a 5-meter metric could indicate a location up to 2 floors below, or up to 2 floors above, the actual floor where a 911 caller may be located. This large search range would make it far more likely that first responders would need to search 2 or more additional floors, significantly increasing average emergency response times and consequently degrading patient outcomes. Due to the likely degradation of patient outcomes with a 5-meter metric, we tentatively conclude that a 3-meter metric provides greater value. We seek comment on this tentative conclusion, including on the marginal benefits and costs of a 3-meter metric versus a 5-meter metric.

33. We also tentatively conclude that, at this time, the value of a 3-meter metric exceeds that of a 2-meter metric. We acknowledge that a 2-meter metric would further improve the accuracy of 911 calls by increasing the likelihood that the caller's floor level could be identified with certainty, which would further improve emergency response times and patient outcomes. In other words, while the margins of both the 2-meter and 3-meter search ranges could extend one level above and below a caller's floor level, a greater portion of the 2-meter search range is likely to be concentrated at the correct floor level. However, because we tentatively conclude that existing solutions are unlikely to achieve 2-meter accuracy for 80% of E911 calls prior to the deadlines established by our rules, we expect that adopting a 2-meter metric would likely cause developers of z-axis solutions to incur substantial development, testing,

and implementation costs, without any guarantee of achieving the 2-meter metric before the deadline. Rather than force these expenditures in pursuit of additional benefits that may not materialize on-schedule, we tentatively conclude that there is greater value in adopting the certain benefits of the achievable 3-meter metric. In addition, we observe that any delay in deployment of z-axis solutions necessitated by a 2-meter metric would also delay realization of the benefits of improved location accuracy—*i.e.,* improved emergency response times, better patient outcomes, and lives saved. We seek comment on this tentative conclusion, including on the marginal benefits and costs of a 2-meter metric versus a 3-meter or 5-meter metric. We also seek comment on how the benefits and costs of requiring CMRS providers to identify floor level when reporting z-axis information would compare to the benefits and costs of providing z-axis information as AGL or MSL height. Are these costs and benefits any different for non-nationwide providers as opposed to nationwide providers?

34. We seek comment on our analysis and tentative conclusions as to the comparative value of these z-axis metrics. Are there ways to more precisely quantify the differences in patient outcomes that would arise from the adoption of 2-, 3-, and 5-meter metrics? For example, under each of these metrics, in what percentage of calls would the floor reported to first responders be the correct one? How much additional time is necessary for first responders to search additional floors of a building if the 911 caller is not on the first floor that they search? How much more time would be required for a first responder to find a 911 caller if a 5-meter metric were adopted, as compared to adoption of a 3-meter metric? How much less time would be required for a first responder to find a 911 caller if a 2-meter metric were adopted? What costs would arise from implementing z-axis solutions to meet a 3-meter metric that would not exist when implementing a 5-meter metric? What is the projected amount of those costs? Are there z-axis solutions for which the cost of satisfying a 3-meter metric is the same or negligible when compared to the costs of implementing a 5-meter metric? Are there any alternative z-axis metrics that have not been addressed that we should consider?

IV. Initial Regulatory Flexibility Analysis

35. 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 the Fourth Further Notice of Proposed Rule Making (Notice). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines in this Notice. The Commission will send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the Notice and IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Proposed Rules

36. The Notice advances the Commission's goal of ensuring ''that all Americans using mobile phones—whether they are calling from urban or rural areas, from indoors or outdoors—have technology that is functionally capable of providing accurate location information so that they receive the support they need in times of an emergency.'' In the Notice, the Commission proposes to adopt a metric to more precisely identify the location of a 911 wireless caller located in a multi-story building. More specifically, we propose to require the provisioning of vertical location (z-axis) information that would enable first responders to identify the caller's floor level for most wireless calls to 911 from multi-story buildings, which represents a critical element to achieving the Commission's indoor location accuracy objectives. Consistent with the regulatory framework established in the last major revision of the Commission's wireless location accuracy rules in 2015 and the information developed in the associated docket, this Notice proposes a z-axis location accuracy metric of 3 meters above or below a handset for 80 percent of wireless Enhanced 911 (E911) indoor calls. As alternatives, we seek comment on different metrics of two or five meters, as well as potentially revised time frames depending on the precision of the metric adopted. Our proposed metric, if adopted, could augment the ability of Public Safety Answering Points (PSAPs) and first responders to more accurately identify the floor level for most 911 calls made from multi-story buildings, reduce emergency response times, and, ultimately, save lives. It also implements the final element of the Commission's existing indoor location accuracy regime, which already includes a timetable for Commercial Mobile Radio Service (CMRS) providers to deliver vertical location information by deploying either dispatchable location or z-axis technology in specific geographic areas. Our proposed z-axis metric will provide certainty to all parties and establish a focal point for further testing, development, and implementation of evolving z-axis location technologies.

B. Legal Basis

37. The proposed action is authorized under Sections 1, 2, 4(i), 7, 10, 201, 214, 222, 251(e), 301, 302, 303, 307, 309, 316, and 332, of the Communications Act of 1934, 47 U.S.C. 151, 152(a), 154(i), 157, 160, 201, 214, 222, 251(e), 301, 302, 303, 307, 309, 316, 332; the Wireless Communications and Public Safety Act of 1999, Public Law 106–81, 47 U.S.C. 615 note, 615, 615a, 615b; and Section 106 of the Twenty-First Century Communications and Video Accessibility Act of 2010, Public Law 111–260, 47 U.S.C. 615c.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

38. 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 which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

39. Small Businesses, Small Organizations, Small Governmental Jurisdictions. Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe 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.

40. 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).

41. 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 we estimate that at least 49,316 local government jurisdictions fall in the category of ''small governmental jurisdictions.''

1. Telecommunications Service Providers

a. Wireless Telecommunications Providers

42. Pursuant to 47 CFR § 20.18(a), the Commission's 911 service requirements are only applicable to Commercial Mobile Radio Service (CMRS) ''[providers], excluding mobile satellite service operators, to the extent that they: (1) Offer real-time, two way switched voice service that is interconnected with the public switched network; and (2) Utilize an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls. These requirements are applicable to entities that offer voice service to consumers by purchasing airtime or capacity at wholesale rates from CMRS licensees.''

43. Below, for those services subject to auctions, we note that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

44. All Other Telecommunications. The ''All Other Telecommunications'' category is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing internet services or voice over internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry. The SBA has developed a small business size standard for All Other Telecommunications, which consists of all such firms with annual receipts of $32.5 million or less. For this category, U.S. Census Bureau data for 2012 shows that there were 1,442 firms that operated for the entire year. Of those firms, a total of 1,400 had annual receipts less than $25 million and 42 firms had annual receipts of $25 million to $49,999,999. Thus, the Commission estimates that the majority of ''All Other Telecommunications'' firms potentially affected by our action can be considered small.

45. AWS Services (1710–1755 MHz and 2110–2155 MHz bands (AWS–1); 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz and 2175–2180 MHz bands (AWS–2); 2155–2175 MHz band (AWS–3)). For the AWS–1 bands, the Commission has defined a ''small business'' as an entity with average annual gross revenues for the preceding three years not exceeding $40 million, and a ''very small business'' as an entity with average annual gross revenues for the preceding three years not exceeding $15 million. For AWS–2 and AWS–3, although we do not know for certain which entities are likely to apply for these frequencies, we note that the AWS–1 bands are comparable to those used for cellular service and personal communications service. The Commission has not yet adopted size standards for the AWS–2 or AWS–3 bands but proposes to treat both AWS–2 and AWS–3 similarly to broadband PCS service and AWS–1 service due to the comparable capital requirements and other factors, such as issues involved in relocating incumbents and developing markets, technologies, and services.

46. Competitive Local Exchange Carriers (Competitive LECs). Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers. Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate NAICS Code category is Wired Telecommunications Carriers and under that size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 indicate that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees. Based on these data, the Commission concludes that the majority of Competitive LECS, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers, are small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. Also, 72 carriers have reported that they are Other Local Service Providers. Of this total, 70 have 1,500 or fewer employees. Consequently, based on internally researched FCC data, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities.

47. Incumbent Local Exchange Carriers (LECs). Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 indicate that 3,117 firms operated the entire year. Of this total, 3,083 operated with fewer than 1,000 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our actions. According to Commission data, one thousand three hundred and seven (1,307) Incumbent Local Exchange Carriers reported that they were incumbent local exchange service providers. Of this total, an estimated 1,006 have 1,500 or fewer employees. Thus, using the SBA's size

standard, the majority of incumbent LECs can be considered small entities.

48. Narrowband Personal Communications Services. Two auctions of narrowband personal communications services (PCS) licenses have been conducted. To ensure meaningful participation of small business entities in future auctions, the Commission has adopted a two-tiered small business size standard in the Narrowband PCS Second Report and Order. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. A ''small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A ''very small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. The SBA has approved these small business size standards.

49. Offshore Radiotelephone Service. This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico. The closest applicable SBA size standard is for Wireless Telecommunications Carriers (except Satellite), which is an entity employing no more than 1,500 persons. U.S. Census Bureau data in this industry for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more. Thus, under this SBA category and the associated small business size standard, the majority of Offshore Radiotelephone Service firms can be considered small. There are presently approximately 55 licensees in this service. However, the Commission is unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for the category of Wireless Telecommunications Carriers (except Satellite).

50. Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing. This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment. The SBA has established a small business size standard for this industry of 1,250 employees or less. U.S. Census Bureau data for 2012 shows that 841 establishments operated in this industry in that year. Of that number, 828 establishments operated with fewer than 1,000 employees, 7 establishments operated with between 1,000 and 2,499 employees and 6 establishments operated with 2,500 or more employees. Based on this data, we conclude that a majority of manufacturers in this industry are small.

51. Rural Radiotelephone Service. The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS). The closest applicable SBA size standard is for Wireless Telecommunications Carriers (except Satellite), which is an entity employing no more than 1,500 persons. For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more. Thus, under this category and the associated size standard, the Commission estimates that the majority of Rural Radiotelephone Services firm are small entities. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies proposed herein.

52. Wireless Communications Services. This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined ''small business'' for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' as an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these small business size standards. In the Commission's auction for geographic area licenses in the WCS there were seven winning bidders that qualified as ''very small business'' entities, and one that qualified as a ''small business'' entity.

53. Wireless Telecommunications Carriers (except Satellite). This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more. Thus, under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities.

54. Wireless Telephony. Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The closest applicable SBA category is Wireless Telecommunications Carriers (except Satellite) and the appropriate size standard for this category under the SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had fewer than 1,000 employees and 12 firms had 1000 employees or more. Thus, under this category and the associated size standard, the Commission estimates that a majority of these entities can be considered small. According to Commission data, 413 carriers reported that they were engaged in wireless telephony. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Therefore, more than half of these entities can be considered small.

55. 700 MHz Guard Band Licensees. In 2000, in the 700 MHz Guard Band Order, the Commission adopted size standards for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. Additionally, a very small business is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. SBA approval of these definitions is not

required. An auction of 52 Major Economic Area licenses commenced on September 6, 2000 and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

56. Lower 700 MHz Band Licenses. The Commission previously adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. The Commission defined a ''small business'' as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. A ''very small business'' is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. Additionally, the lower 700 MHz Service had a third category of small business status for Metropolitan/Rural Service Area (MSA/RSA) licenses—''entrepreneur''—which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA approved these small size standards. An auction of 740 licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)) commenced on August 27, 2002 and closed on September 18, 2002. Of the 740 licenses available for auction, 484 licenses were won by 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses. A second auction commenced on May 28, 2003, closed on June 13, 2003, and included 256 licenses: 5 EAG licenses and 476 Cellular Market Area licenses. Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses. On July 26, 2005, the Commission completed an auction of 5 licenses in the Lower 700 MHz band (Auction No. 60). There were three winning bidders for five licenses. All three winning bidders claimed small business status.

57. In 2007, the Commission reexamined its rules governing the 700 MHz band in the 700 MHz Second Report and Order. An auction of 700 MHz licenses commenced January 24, 2008, and closed on March 18, 2008, which included: 176 Economic Area licenses in the A-Block, 734 Cellular Market Area licenses in the B-Block, and 176 EA licenses in the E-Block. Twenty winning bidders, claiming small business status (those with attributable average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years) won 49 licenses. Thirty-three winning bidders claiming very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years) won 325 licenses.

58. Upper 700 MHz Band Licenses. In the 700 MHz Second Report and Order, the Commission revised its rules regarding Upper 700 MHz licenses. On January 24, 2008, the Commission commenced Auction 73 in which several licenses in the Upper 700 MHz band were available for licensing: 12 Regional Economic Area Grouping licenses in the C Block, and one nationwide license in the D Block. The auction concluded on March 18, 2008, with 3 winning bidders claiming very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years) and winning five licenses.

59. Wireless Resellers. The SBA has not developed a small business size standard specifically for Wireless Resellers. The SBA category of Telecommunications Resellers is the closest NAICS code category for wireless resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. Under the SBA's size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 show that 1,341 firms provided resale services for the entire year. Of that number, all operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 211 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of Wireless Resellers are small entities.

b. Equipment Manufacturers

60. Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing. This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment. The SBA has established a size standard for this industry of 1,250 employees or less. U.S. Census data for 2012 shows that 841 establishments operated in this industry in that year. Of that number, 828 establishments operated with fewer than 1,000 employees, 7 establishments operated with between 1,000 and 2,499 employees and 6 establishments operated with 2,500 or more employees. Based on this data, we conclude that a majority of manufacturers in this industry can be considered small.

61. Semiconductor and Related Device Manufacturing. This industry comprises establishments primarily engaged in manufacturing semiconductors and related solid state devices. Examples of products made by these establishments are integrated circuits, memory chips, microprocessors, diodes, transistors, solar cells and other optoelectronic devices. The SBA has developed a small business size standard for Semiconductor and Related Device Manufacturing, which consists of all such companies having 1,250 or fewer employees. U.S. Census Bureau data for 2012 show that there were 862 establishments that operated that year. Of this total, 843 operated with fewer than 1,000 employees. Thus, under this size standard, the majority of firms in this industry can be considered small.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

62. The Notice proposes and seeks comment on a z-axis (vertical) location accuracy metric that will, if adopted, affect the reporting, recordkeeping and/

or other compliance requirements of nationwide and non-nationwide CMRS providers, including small businesses. Under the current rules, by 2021, nationwide CMRS providers must deploy either (1) dispatchable location, or (2) z-axis technology that achieves the Commission-approved z-axis metric, which metric is yet to be adopted, in each of the top 25 Cellular Market Areas. CMRS providers must deploy z-axis technology to cover 80 percent of the Cellular Market Areas population if z-axis technology is used. By 2021, nationwide CMRS providers must deploy dispatchable location or z-axis technology pursuant to the metric that will be adopted by the Commission in each of the top 50 Cellular Market Areas. Non-nationwide carriers, including resellers, that serve any of the top 25 or 50 CMAs will have an additional year to meet the two benchmarks (*i.e.,* until 2022 for the top 25 Cellular Market Areas and 2024 for the top 50 Cellular Market Areas). Thus, under the Commission's proposal, CMRS nationwide and non-nationwide CMRS providers that deploy z-axis technology will be required to provide vertical location information within 3 meters under the Commission's existing timelines. As alternatives, we seek comment on different metrics of two or five meters, as well as potentially revised time frames depending on the precision of the metric adopted.

63. We have tentatively concluded, based on the z-axis solution test results and other comments, that a metric of 3 meters for 80% of indoor calls is technically achievable and that z-axis solutions capable of meeting this metric can be deployed within the timeframes established in the rules. As described further below, we also have tentatively concluded that the cost of compliance with the 3-meter metric is relatively low. Small entities may incur costs associated with software and/or hardware changes and may need to employ engineers or other experts in order to comply with the proposal in the Notice. However, the technology solution a small entity chooses to implement the requirement will determine the nature of the costs it incurs.

64. We anticipate that small entities would have a choice of vendors with z-axis technology solutions, which will lessen their costs to comply with the proposed rule, if adopted. One of the vendors that participated in Stage Z testing, NextNav, asserts that its z-axis solution requires only software changes to be made to each handset could be made available for a nominal cost that amounts to significantly less than a penny per month per handset. Another test vendor, Polaris, asserts that its solution is instantly available and deployable throughout a carrier's nationwide network. Polaris also asserts that its solution is ''objectively affordable'' because it is software-based, does not require hardware in networks or markets, and ''does not require anything special in devices beyond implementation of adopted 3GPP and OMA standards.'' Further, with the addition of vertical location technologies and vendors into the market, small entities will have more implementation options, which could further reduce their cost of compliance. As noted above, Google has announced that it has developed and is deploying its Emergency Location System (ELS) in the U.S. for Android devices. Google states that ELS is ''a supplemental service that sends enhanced location directly from Android handsets to emergency services when an emergency call is placed.'' Google also states that ELS is part of the Android operating system and does not require any special hardware or updates. Moreover, as the Commission noted in the Fourth Report and Order, we continue to expect that these technology costs will decline as demand grows.

E. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

65. The RFA requires an agency to describe any significant 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 or reporting requirements under the rule for 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 small entities.

66. Based on a comparison of the benefits and costs to alternatives metrics, the Commission believes that the 3-meter metric that it proposes to adopt is the most cost-effective option for achieving the Commission's objectives in this proceeding while avoiding undue burdens on all entities. The metric should benefit all entities by giving certainty in selecting an option for complying with the Commission's rules. While the rule proposed in the Notice would apply to all nationwide and non-nationwide CMRS in the same manner, the Commission has already taken steps to accommodate smaller non-nationwide CMRS providers by supplying additional time to comply with any vertical location accuracy benchmarks ultimately adopted by the Commission. The rules also already establish that nationwide and non-nationwide CMRS providers may choose to provide dispatchable location or deploy z-axis technology; and they give non-nationwide CMRS providers an additional year to comply with the Commission's z-axis benchmarks. In addition, the proposed rule gives small entities the freedom to choose a solution that best fits their financial situation, rather than imposing a specific z-axis technology solution, which should minimize the economic impact on these entities. The Commission does not believe that the costs and/or administrative burdens associated with the proposed rule would unduly burden small entities and expects to more fully consider the economic impact and alternatives for small entities following the review of comments filed in response to the Notice. The metric the Commission proposes to adopt should benefit all entities by giving certainty in selecting an option for complying with the Commission's rules. Many CMRS providers likely would be able to avoid unnecessary costs by knowing that the Commission has chosen an accuracy metric of 3 meters, which means they don't have to make an expensive attempt to satisfy a 2-meter metric by the implementation date specified in the rules. All CMRS providers, including small entities, should benefit from the scale economies provided to phone manufacturers who would be able to provision all phones to the same 3-meter standard adopted by the Commission. As alternatives, we seek comment on different metrics of two or five meters, as well as potentially revised time frames depending on the precision of the metric adopted.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

67. None.

V. Ordering Clauses

68. Accordingly, *it is ordered*, pursuant to Sections 1, 2, 4(i), 7, 10, 201, 214, 222, 251(e), 301, 302, 303, 307, 309, 316, and 332, of the Communications Act of 1934, 47 U.S.C. 151, 152(a), 154(i), 157, 160, 201, 214, 222, 251(e), 301, 302, 303, 307, 309, 316, 332; the Wireless Communications and Public Safety Act of 1999, Public Law 106–81, 47 U.S.C. 615 note, 615, 615a, 615b; and Section 106 of the Twenty-

First Century Communications and Video Accessibility Act of 2010, Public Law 111–260, 47 U.S.C. 615c, that this Fourth Further Notice of Proposed Rulemaking, is hereby *adopted.*

69. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Fourth Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 20

Communications common carriers, Communications equipment, Radio.

Federal Communications Commission.

Katura Jackon,

Federal Register Liaison Officer, Office of the Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 20 as follows:

PART 20—COMMERCIAL MOBILE SERVICES

■ 1. The authority citation for part 20 continues to read as follows:

Authority: 47 U.S.C. 151, 152(a) 154(i), 157, 160, 201, 214, 222, 251(e), 301, 302, 303, 303(b), 303(r), 307, 307(a), 309, 309(j)(3), 316, 316(a), 332, 610, 615, 615a, 615b, 615c, unless otherwise noted.

■ 2. Section 20.18 is amended by revising paragraph (i)(2)(ii)(C) introductory text and paragraph (i)(2)(ii)(D) to read as follows:

§ 20.18 911 Service.

* * * * *

(i) * * *

(2) * * *

(ii) * * *

(C) By April 3, 2021: In each of the top 25 CMAs, nationwide CMRS providers shall deploy either dispatchable location, or z-axis technology in compliance with the following z-axis accuracy metric: Within 3 meters above or below (plus or minus 3 meters) the handset for 80% of wireless E911 calls.

* * * * *

(D) By April 3, 2023: In each of the top 50 CMAs, nationwide CMRS providers shall deploy either dispatchable location, or z-axis technology in compliance with the following z-axis accuracy metric: Within 3 meters above or below (plus or minus 3 meters) the handset for 80% of wireless E911 calls.

* * * * *

[FR Doc. 2019–06012 Filed 4–3–19; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2019–0024]

RIN 2127–AL03

Federal Motor Vehicle Safety Standards; Glazing Materials

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Proposed rule; withdrawal.

SUMMARY: NHTSA withdraws its June 21, 2012 Notice of Proposed Rulemaking (NPRM), which proposed revising Federal motor vehicle safety standard (FMVSS) No. 205, ''Glazing materials,'' to harmonize it with Global Technical Regulation (GTR) No. 6, ''Safety Glazing Materials for Motor Vehicles and Motor Vehicle Equipment.'' Based on the results of the agency's review of available information and analysis of the technically substantive comments on the proposal, NHTSA is unable to conclude at this time that harmonizing FMVSS No. 205 with GTR No. 6 would increase safety.

DATES: As of April 4, 2019, the proposed amendments to 49 CFR part 571 that were contained in the notice of proposed rulemaking (NPRM) published June 21, 2012 (77 FR 37477) are withdrawn.

FOR FURTHER INFORMATION CONTACT: James Myers, Office of Crashworthiness Standards (Phone 202–366–1810; FAX: 202–366–2739) or Callie Roach, Office of the Chief Counsel (Phone: 202–366–2992; FAX: 202–366–3820).

You may send mail to these officials at: National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Background

Federal Motor Vehicle Safety Standard (FMVSS) No. 205, ''Glazing materials,'' (49 CFR 571.205), specifies performance requirements for the types of glazing that may be installed in motor vehicles. It also specifies the vehicle locations in which the various types of glazing may be installed. The purpose of FMVSS No. 205 is to reduce injuries (*e.g.,* lacerations) resulting from impact to glazing surfaces, to ensure a necessary degree of transparency in motor vehicle windows for driver visibility, and to minimize the possibility of occupants being thrown through the vehicle windows in collisions. FMVSS No. 205 applies to passenger cars, multipurpose passenger vehicles, trucks, buses, motorcycles, slide-in campers, pickup covers designed to carry persons while in motion and low speed vehicles, and to glazing materials for use in those vehicles.

GTR No. 6, ''Safety Glazing Materials for Motor Vehicles and Motor Vehicle Equipment,'' was adopted under the United Nations/Economic Commission for Europe (UN/ECE) 1998 Agreement, which is administered by World Forum for Harmonization of Vehicle Regulation (WP.29). At the one-hundred-and-thirty-second session of the WP.29 in March 2004, the formal proposal to develop a GTR on safety glazing was adopted, and at that time restricted the scope of the glazing GTR to glass safety glazing, thereby excluding other materials, such as plastics. The objective of GTR No. 6 is to develop an internationally harmonized standard regarding the safety of glass automotive glazing materials. GTR No. 6 includes requirements and tests to ensure that the mechanical properties, optical qualities and environmental resistance of glazing are satisfactory; it does not include type approval, plastic glazing and installation requirements.

II. NPRM

On June 21, 2012, NHTSA published a NPRM [1] as part of the agency's ongoing effort to harmonize vehicle safety standards under the UN/ECE 1998 agreement when, and to the extent, appropriate to do so. The agency stated in the NPRM that harmonization with GTR No. 6 would modernize the test procedures for tempered glass, laminated glass, and glass-plastic glazing used in front windshields and rear and side windows. The GTR proposed an upgraded fragmentation test for testing the tempering of curved tempered glass, and a new procedure for testing an optical property of the windshield at the angle of installation, to more accurately reflect real world driving conditions than the current procedure used in Standard No. 205. The agency said further that most of the proposals were minor amendments that would harmonize differing measurements and performance requirements for similar test procedures. Many of the tests in the GTR were said to be substantially similar to tests currently included in FMVSS No. 205.

III. Comments Received

In the NPRM, the agency requested public comment on whether the

[1] 77 FR 37478.

proposed amendments reflecting provisions of the GTR are suitable for being adopted into the Federal glazing standard. NHTSA received comments from 14 entities in response to the NPRM to adopt GTR provisions in FMVSS No. 205.[2] These comments came from trade associations, glazing manufacturers, automobile manufacturers, a glazing industry expert, and a safety technology company. Overall, most of the comments supported the harmonization efforts, though several suggested revisions or requested clarification. A few commenters were opposed to certain aspects of the proposed harmonization of glazing standards, with one respondent completely opposing the NPRM. NHTSA also received comments for definitions, markings, and cost.

IV. Decision to Withdraw Rulemaking

Crash data indicates that current glazing materials are performing acceptably. Since the 1960s, the magnitude of the safety problem for glazing has been substantially reduced.[3] The increased availability of automatic occupant protection systems has resulted in a substantial reduction in the numbers of occupants impacting the windshield and thus being exposed to lacerative injuries from broken glass. The current glazing standard ensures that emerging and evolving glazing technologies produce commensurate benefits and that glazing remains a safety concern rather than becoming a safety problem.

According to agency crash data, occupant ejection, particularly during rollover events, is a much larger safety problem than lacerations from broken glass. NHTSA addressed this safety problem by issuing FMVSS No. 226, ''Ejection mitigation,'' in 2011. The standard became fully phased-in in 2017. While glazing materials may be one component of an ejection mitigation countermeasure system, the scope of FMVSS No. 205 is focused on material performance in terms of the glazing mechanical strength, optical properties, and environmental durability. The tests described in FMVSS No. 205 assure conformance with minimum required glazing equipment performance levels.

Based on the results of our review and of available data and analysis of the technically substantive comments, the agency is unable to conclude at this time that harmonizing FMVSS No. 205 with GTR No. 6 would, on balance, increase or decrease safety. While some of the proposed changes would be expected to improve safety as they more accurately reflect real world driving conditions, others may result in a decrease in safety. NHTSA has determined that it does not have sufficient data to evaluate the safety implications of harmonizing FMVSS No. 205 with GTR No. 6. Therefore, NHTSA has determined that the most appropriate path forward at this time is to withdraw the 2012 NPRM.

In order to better inform future agency decisions, NHTSA is planning a glazing research study. NHTSA is also monitoring SAE International's efforts to publish a new Glazing Standard, SAE Standard J3097 ''Standard for Safety Glazing Materials for Glazing Motor Vehicles and Motor Vehicle Equipment Operating on Land Highways.'' If this study is undertaken as planned, it may enable the agency to reach clearer conclusions about the impact of harmonizing FMVSS No. 205 with GTR No. 6. Depending on the outcome of that study and SAE's progress, NHTSA would consider those data in potential next steps.

The agency notes that this document does not represent a decision whether or not to adopt GTR No. 6. NHTSA voted in favor of establishing a global technical regulation (GTR) on automotive glazing and considered adopting the regulations by issuing an NPRM in 2012. However, after considering public comments received in response to the proposal, the agency is withdrawing the NPRM to reconsider its next steps. Accordingly, NHTSA withdraws the 2012 proposed glazing GTR harmonization rulemaking.

Issued in Washington, DC, under authority delegated in 49 CFR part 1.95 and 501.5.

Heidi Renate King,

Deputy Administrator.

[FR Doc. 2019–06518 Filed 4–3–19; 8:45 am]

BILLING CODE 4910–59–P

[2] Docket No. NHTSA–2012–0083.

[3] Kahane, C.J. (2015, January). Lives saved by vehicle safety technologies and associated Federal Motor Vehicle Safety Standards, 1960 to 2012—Passenger cars and LTVs—With reviews of 26 FMVSS and the effectiveness of their associated safety technologies in reducing fatalities, injuries and crashes. (Report No. DOT HS 812 069). Washington, DC: National Highway Traffic Safety Administration.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R3–ES–2018–0056; 4500030113]

RIN 1018–BD26

Endangered and Threatened Wildlife and Plants; 12-Month Petition Finding and Endangered Species Status for the Missouri Distinct Population Segment of Eastern Hellbender

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on a petition to list the hellbender (Cryptobranchus alleganiensis), a salamander species, as an endangered or threatened species under the Endangered Species Act of 1973 (Act), as amended. Because the Service published a final rule to list the Ozark hellbender subspecies (Cryptobranchus alleganiensis bishopi) as endangered on October 6, 2011, this 12-month petition finding addresses the eastern hellbender subspecies (Cryptobranchus alleganiensis alleganiensis). After review of the best available scientific and commercial information, we find that listing of the eastern hellbender is not warranted. However, we determined that listing is warranted for a distinct population segment (DPS) of the eastern hellbender (Cryptobranchus alleganiensis alleganiensis) in Missouri. Accordingly, we propose to list the Missouri DPS of the eastern hellbender (C. a. alleganiensis) as an endangered species under the Act. If we finalize this rule as proposed, it would extend the Act's protections to this DPS.

DATES: We will accept comments received or postmarked on or before June 3, 2019. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by May 20, 2019.

ADDRESSES: You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter FWS–R3–ES–2018–0056, which is the docket number for this rulemaking. Then, click on the Search button. On the

resulting page, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rule box to locate this document. You may submit a comment by clicking on ''Comment Now!''

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R3–ES–2018–0056, U.S. Fish and Wildlife Service, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see *Public Comments,* below, for more information).

FOR FURTHER INFORMATION CONTACT: Karen Herrington, Field Supervisor, Missouri Ecological Services Field Office, 101 Park DeVille Drive, Suite A, Columbia, MO 65203; telephone 573–234–2132. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Information Requested

Public Comments

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other concerned governmental agencies, Native American tribes, the scientific community, industry, or any other interested parties concerning this proposed rule. We particularly seek comments concerning:

(1) The eastern hellbender's biology, range, and population trends in Missouri, including:

(a) Biological or ecological requirements of the DPS, including habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy;

(c) Historical and current range, including distribution patterns;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for the DPS, its habitat, or both.

(2) Factors that may affect the continued existence of the DPS, which may include habitat modification or destruction, overutilization, disease, predation, the inadequacy of existing regulatory mechanisms, or other natural or manmade factors.

(3) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this DPS and existing regulations that may be addressing those threats.

(4) Additional information concerning the historical and current status, range, distribution, and population size of this DPS, including the locations of any additional populations of this DPS.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include. Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*) directs that determinations as to whether any species is an endangered or threatened species must be made ''solely on the basis of the best scientific and commercial data available.''

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Missouri Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Public Hearing

Section 4(b)(5) of the Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days after the date of publication of this proposed rule in the **Federal Register** (see **DATES**, above). Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule a public hearing on this proposal, if requested, and announce the date, time, and place of the hearing, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

Peer Review

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing actions under the Act, we sought the expert opinions of five appropriate specialists regarding the species status assessment (SSA) report that supports this proposed rule; we received responses from two of the five peer reviewers. These peer reviewers have expertise in hellbender biology, ecology, and genetics. The purpose of peer review is to ensure that our listing determinations are based on scientifically sound data, assumptions, and analyses. Comments from the peer reviewers will be available along with other public comments in this proposed rule's Docket No. FWS–R3–ES–2018–0056 on *http://www.regulations.gov.*

Previous Federal Actions

We identified the hellbender (*Cryptobranchus alleganiensis*) as a Category 2 candidate species in our December 30, 1982, Candidate Notice of Review (CNOR) (47 FR 58454). Category 2 candidates were defined as species for which we had information that proposed listing was possibly appropriate, but conclusive data on biological vulnerability and threats were not available to support a proposed rule at that time. The species remained so designated in subsequent annual CNORs (50 FR 37958, September 18, 1985; 54 FR 554, January 6, 1989; 56 FR 58804, November 21, 1991; 59 FR 58982, November 15, 1994). In the February 28, 1996, CNOR (61 FR 7596), we discontinued the designation of Category 2 candidates; therefore, the hellbender was no longer a candidate species.

In 2001, the Ozark hellbender subspecies (*C. a. bishopi*) was added to the candidate list (66 FR 54808, October 30, 2001). Candidates are those fish, wildlife, and plants for which we have on file sufficient information on biological vulnerability and threats to support preparation of a listing proposal, but for which development of a listing rule is precluded by other higher priority listing activities. The Ozark hellbender was included in seven subsequent annual CNORs (67 FR 40657, June 13, 2002; 69 FR 24876, May

4, 2004; 70 FR 24870, May 11, 2005; 71 FR 53756, September 12, 2006; 72 FR 69034, December 6, 2007; 73 FR 75176, December 10, 2008; and 74 FR 57804, November 9, 2009).

In April of 2010, the Center for Biological Diversity (CBD) petitioned the Service to list 404 aquatic, riparian, and wetland species from the southeastern United States under the Act. The hellbender (*C. alleganiensis*) was among these 404 species. On September 27, 2011, we published a substantial 90-day finding for 374 of the 404 species, including the hellbender, soliciting information about, and initiating status reviews for, those species (76 FR 59836).

Prior to the publication of that 90-day finding, we had already been evaluating the status of Ozark hellbender and had published a proposed rule to list the Ozark hellbender subspecies as endangered (75 FR 54561; September 8, 2010). On October 6, 2011, we published final rules listing the Ozark hellbender as endangered under the Act (76 FR 61956) and listing the hellbender (*C. alleganiensis*), including its two subspecies, the eastern hellbender (*C. a. alleganiensis*) and the Ozark hellbender (*C. a. bishopi*), in Appendix III of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), which addresses native species that need regulation to prevent or restrict exploitation (76 FR 61978).

On June 17, 2014, CBD filed a complaint against the Service for failure to complete a 12-month finding for the hellbender within the statutory timeframe. On September 22, 2014, the Service entered into a settlement agreement with CBD to address the complaint; the court-approved settlement agreement specified that a 12-month finding for the hellbender would be delivered to the **Federal Register** by March 31, 2019. This document serves as our 12-month finding on the April 2010 petition.

Background

The species belongs to the Order Caudata, family Cryptobranchidae. The genus *Cryptobranchus* is monotypic (having only one species) and currently contains two recognized subspecies: *C. alleganiensis alleganiensis* (eastern hellbender) and *C. alleganiensis bishopi* (Ozark hellbender).

Because the Ozark hellbender is already listed under the Act, we conducted an SSA for the eastern hellbender. A thorough review of the taxonomy, life history, and ecology of the eastern hellbender (*C. a. alleganiensis*) is presented in the SSA report (U.S. Fish and Wildlife Service 2018, entire). The full SSA report can be found on the Service's Midwest Region website at *https://www.fws.gov/midwest/es/* and at *http://www.regulations.gov* under Docket No. FWS–R3–ES–2018–0056.

The eastern hellbender is a large, entirely aquatic salamander found in perennial streams across 15 States from northeastern Mississippi, northern Alabama, northern Georgia, Tennessee, western North Carolina, western Virginia, West Virginia, Kentucky, southern Illinois, southern Indiana, Ohio, Pennsylvania, western Maryland, and southern New York, with disjunct populations occurring in east-central Missouri.

Eastern hellbender streams are usually fast-flowing, cool, and highly oxygenated (Green 1934, p. 28; Bishop 1941, pp. 50–51; Green and Pauley 1987, p. 46). Eastern hellbenders respire through their skin, aided by prominent, highly vascularized skin folds (Guimond 1970, pp. 287–288; Nickerson and Mays 1973, pp. 26–27), and are not well adapted to low-oxygen conditions (Ultsch and Duke 1990, p. 255). In addition, low water conductivity is an important habitat requirement (Bodinof Jachowski and Hopkins 2018, pp. 220–221).

Boulders provide cover and breeding sites, and are the most important indicator of adult eastern hellbender habitat (Lipps 2009, p. 9; Humphries 2005, p. 10; Bothner and Gottlieb 1991, p. 45). Hellbender nests are typically excavations beneath partially embedded, large (greater than 30 centimeters), flat rocks with a single opening facing downstream or perpendicular to streamflow (Smith 1907, p. 7). Females deposit eggs under a nest rock, and males externally fertilize the egg clutch (Nickerson and Mays 1973, p. 45), after which a single male defends the nest from other hellbenders (Smith 1907, pp. 24–25). Larvae are typically found within the interstices of cobble and gravel, and occasionally under large rocks (Nickerson *et al.* 2003, p. 624; Keitzer 2007, pp. 16–17; Foster *et al.* 2008, p. 184).

Larvae lose their gills about 1.5 to 2 years after hatching (Bishop 1941, p. 49; Nickerson and Mays 1973, p. 53); juveniles sexually mature at an age of approximately 5 or 6 years (Bishop 1941, p. 50). Maximum age is not known with certainty, but estimates suggest that eastern hellbenders can live at least 25 to 30 years in the wild (Taber *et al.* 1975, p. 635; Peterson *et al.* 1988, p. 298).

Adults are primarily nocturnal and eat crayfish and, to a lesser degree, small fish (Smith 1907, p. 12; Swanson 1948, p. 363; Peterson *et al.* 1989, p. 440). Other occasional food items include insects and larval and adult frogs (Green 1935, p. 36; Pfingsten 1990, p. 49; Foster 2006, p. 74). The diet of larval eastern hellbenders consists mainly of aquatic insects (Pitt and Nickerson 2005, p. 69; Hecht *et al.* 2017, p. 159). Eastern hellbenders occupy relatively small home ranges of approximately 30 square meters (m^2) (322 square feet (ft^2)) to approximately 2,212 m^2 (23,810 ft^2) (Hillis and Bellis 1971, p. 124; Coatney 1982, p. 23; Peterson and Wilkinson 1996, p. 126; Humphries and Pauley 2005, p. 137; Burgmeier *et al.* 2011a, p. 139) but are also capable of long distance movements, which have been documented up to 12.9 kilometers (km) (8 miles (mi)) (Petokas 2011, pers. comm.; Foster 2012, pers. comm.).

Summary of Biological Status and Threats

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species is an ''endangered species'' or a ''threatened species.'' The Act defines an endangered species as a species that is ''in danger of extinction throughout all or a significant portion of its range,'' and a threatened species as a species that is ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The Act requires that we determine whether any species is an ''endangered species'' or a ''threatened species'' because of any of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or manmade factors affecting its continued existence. These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term ''threat'' to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term ''threat'' includes actions or conditions that have a direct

impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term ''threat'' may encompass—either together or separately—the source of the action or condition or the action or condition itself. However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an ''endangered species'' or a ''threatened species.'' In determining whether a species meets either definition, we must evaluate all identified threats by considering the expected response by the species, and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species—such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an ''endangered species'' or a ''threatened species'' only after conducting this cumulative analysis and describing the expected effect on the species now and in the foreseeable future.

We completed a comprehensive assessment of the biological status of the eastern hellbender, and prepared a report of the assessment (SSA report), which provides a thorough account of the subspecies' overall viability. In the SSA, we define viability as the ability of a species to persist over the long term and to avoid extinction. To assess the viability of the eastern hellbender, we used the conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 306–310) in our analysis. Briefly, resiliency refers to the ability of the species to withstand stochastic events (arising from random factors), such as fluctuations in birth rates (demographic stochasticity) or variations in rainfall or temperature (environmental stochasticity). Representation refers to the ability of the species to adapt over time to long-term changes in the environment (natural or human-caused) and is a function of a species' breadth of diversity: Genetic diversity within and among populations and the ecological diversity (also called environmental variation or diversity) of populations across the species' range. Redundancy refers to the ability of the species to withstand catastrophic events (for example, droughts or hurricanes). In general, the more redundant and resilient a species is and the more representation it has, the more likely it is to sustain populations over time, even under changing environmental conditions. The following is a summary of the key results and conclusions from the SSA report.

Summary of Current Condition

Historically, 570 healthy eastern hellbender populations are known to have existed across 15 States. Currently, 345 (61 percent) are extant, and 225 populations (39 percent) are presumed or functionally extirpated. Of the 345 extant populations across the range, 127 (37 percent) are likely healthy (stable, recruiting), and 218 (63 percent) are declining.

Eastern hellbender abundance has decreased in many parts of the range, with reduced numbers observed as early as 1948 (Swanson 1948, p. 363). Eastern hellbender survey effort has increased substantially over the last 5 to 10 years. Of the extant populations, 125 were discovered since 2012. Most of the new populations discovered since 2000 were observations of a single individual or detection via environmental DNA (genetic material collected from environmental samples). A lack of data regarding abundance or size class structure in these populations precludes assessments of population trends.

We identified four geographical units (referred to in the SSA report as adaptive capacity units (ACUs)), based on Hime *et al.'*s (2016, entire) evaluation of genetic markers, to delineate variation in genetic and ecological traits within the eastern hellbender's historical range (*i.e.,* evolutionary lineages). The units are: (1) Missouri River drainage (MACU), (2) Ohio River-Susquehanna River drainages (OACU), (3) Tennessee River drainage (TACU), and (4) Kanawha River drainage (KACU).

Since 2000, the eastern hellbender has been documented from these four geographic units across 15 States. The number of populations varies among ACUs, with 1 percent of the extant populations occurring in MACU, 39 percent in OACU, 51 percent in TACU, and 9 percent in KACU. Within the ACUs, the number of healthy populations also varies, with 0 in MACU, 42 in OACU, 68 in TACU, and 16 in KACU.

Influences on the Eastern Hellbender

In consultation with species' experts, we identified the past and current negative and beneficial factors that have led to the eastern hellbender's current conditions and which may influence population dynamics into the future. Factors having a negative impact on eastern hellbender individuals are referred to as risk factors (also as stressors), while factors having a beneficial effect are referred to as conservation factors. We referred to risk and conservation factors collectively as ''influences.'' A brief summary of the most influential factors is presented below; for a full description of these factors, refer to chapter 5 of the SSA report (Service 2018, pp. 26–48).

Sedimentation

Across the range, sedimentation was identified as the factor most impacting the status of the eastern hellbender. Sedimentation is the addition of fine soil particles (*e.g.,* sands, silts, clays) to streams. These sediments bury shelter and nest rocks (Blais 1996, p. 11; Lipps 2009, p. 10; Hopkins and DuRant 2011, p. 112), suffocate eggs (Nickerson and Mays 1973, pp. 55–56), alter habitat for crayfish (the primary food source of adult eastern hellbenders) (Santucci *et al.* 2005, pp. 986–987; Kaunert 2011, p. 23), and degrade habitat for larval and juvenile hellbenders, as well as habitat for macroinvertebrates, which are an important food source for larval hellbenders (Cobb and Flannagan 1990, pp. 35–37; Nickerson *et al.* 2003, p. 624). Because sedimentation affects all life stages of the eastern hellbender, impairs or prevents successful reproduction, and is pervasive throughout the subspecies' range, it has specifically been implicated as a cause of eastern hellbender declines and as a continuing threat throughout much of the species' range.

Water Quality Degradation

Degraded water quality was estimated as having the second highest impact on the eastern hellbender's status in all ACUs because it can cause direct mortality of eastern hellbenders and, at sub-lethal levels, can alter physiological processes and increase vulnerability to other threats (Maitland 1995, p. 260). Major sources of aquatic pollutants include domestic wastes, agricultural runoff, coal mining activities, road construction, and unpermitted industrial discharges. While it is unlikely that a chemical spill could cause catastrophic loss of an entire ACU, it is possible if multiple spills occur in an ACU with low redundancy.

Habitat Destruction and Modification

Destruction of habitat from impoundments, channelization, and instream gravel mining was also ranked

relatively high as a factor impacting the eastern hellbender's status due to the extent of these stressors throughout the subspecies' range. Impoundments reduce upstream streamflow, increasing sedimentation and subsequently lowering dissolved oxygen. Dams have been constructed in every major stream system in the range of the eastern hellbender and have contributed to population declines and local extirpations, especially in large streams used for navigation (*e.g.,* Ohio, Cumberland, and Tennessee rivers) (Echternacht 2009, pers. comm.; Gentry 1955, p. 169; Graham *et al.* 2011, p. 246; Mount 1975, p. 109; Nickerson and Mays 1973, pp. 58, 63, 66; Pfingsten 1990, p. 49; L. Williams 2012, pers. comm.), and are currently restricting movement among some populations and into some previously occupied habitats. Channelization (typically conducted for drainage improvements) and instream gravel mining remove the coarse substrates (*e.g.,* gravel, cobble, and boulder) and often the associated riparian vegetation, and result in accelerated erosion, decreased habitat diversity, and channel instability (Hartfield 1993, p. 131; Hubbard *et al.* 1993, pp. 136–145).

Direct Mortality or Permanent Removal of Animals

Large numbers of eastern hellbenders have historically been removed from some streams for scientific and educational purposes, for the pet trade, and for eradication efforts. These removals likely contributed to the population declines seen in some streams. The current rate of permanent removal of eastern hellbenders is likely significantly lower than it has been historically. However, collection and sale of eastern hellbenders continues to be a threat, with internet advertisements as recent as 2010 soliciting purchase of wholesale lots of eastern hellbenders (Briggler 2010, pers. comm.). Killing of eastern hellbenders by some anglers and the removal of individuals for personal use and the pet trade also continues in some areas. Even though many eastern hellbenders targeted by scientists and nature enthusiasts are returned to the stream, the act of searching for eastern hellbenders can result in increased egg and larval mortality. Eastern hellbenders are typically captured by lifting large shelter rocks and catching individuals by hand. Many researchers have speculated that rock lifting to collect eastern hellbenders results in adverse impacts, especially when done during the breeding season (Lindberg and Soule 1991, p. 8; Williams *et al.* 1981b, p. 26; Williams 2012, pers. comm.).

As a long-lived species, removing adult eastern hellbenders from stream populations may be particularly detrimental, as stable populations of long-lived species typically have high adult survival rates, which compensates for correspondingly low rates of recruitment into the adult populations (Miller 1976, p. 2). In eastern hellbender populations with low densities and little evidence of recent recruitment into the adult population, the removal of any individuals from a population may be deleterious (Pfingsten 1988, p. 16). Because many eastern hellbender populations are already stressed by habitat degradation, compensation for high adult mortality through high recruitment of juveniles is even less likely. Although the magnitude of this threat is not known with certainty, its occurrence is commonly noted by field researchers, suggesting that it is a relatively common occurrence in some portions of the subspecies' range. Furthermore, as the number of populations decline and become concentrated on public lands, locations and animals might be easier to find, especially if artificial nest box use increases in the future.

Disease

Disease can act as a stressor on eastern hellbender populations and has the potential to cause catastrophic loss of hellbender populations. Emerging infectious diseases (EIDs), especially fungal EIDs in wildlife, are on the rise, and salamanders are especially susceptible given the high magnitude of legal and illegal trade in herpetofauna.

Batrachochytrium dendrobatidis (*Bd*) is a fungal pathogen that can cause chytridiomycosis, a highly infectious amphibian disease associated with mass die-offs, population declines and extirpations, and potentially species extinctions on multiple continents (Berger *et al.* 1998, pp. 9031–9036; Bosch *et al.* 2001, pp. 331–337; Lips *et al.* 2006, pp. 3165–3166). *Bd* infection of eastern hellbenders has been confirmed in every State where testing has occurred (*i.e.,* New York, Pennsylvania, West Virginia, Ohio, Kentucky, Indiana, North Carolina, Tennessee, Georgia, and Missouri) (Greathouse 2007, p. 42; Briggler *et al.* 2008, p. 444; Burgmeier *et al.* 2011b, p. 845; Gonynor *et al.* 2011, pp. 58–59; Regester *et al.* 2012, p. 20; Roblee 2012, pers. comm.; Souza *et al.* 2012, p. 562; Williams and Groves 2014, p. 457; Wolfe 2012, pers. comm.). The earliest known record of an infected eastern hellbender is from Missouri in 1975; *Bd* infection rates in eastern hellbenders collected in Missouri between 1896 and 1994 was 5.4 percent (Bodinof *et al.* 2011, p. 3). Even mild chronic *Bd* infections may negatively impact eastern hellbenders and may increase susceptibility of eastern hellbenders to other infection. While *Bd* currently does not appear to be causing large-scale mortality events in wild populations of eastern hellbenders, other stressors, such as environmental contaminants or rising water temperatures, can weaken animals' immune systems, leading to outbreaks of clinical disease and cause mortality events in the future (Briggler *et al.* 2007, p. 18; Regester *et al.* 2012, p. 19).

Batrachochytrium salamandrivorans (*Bsal*) is a fungal pathogen that invaded Europe from Asia around 2010 and has caused mass die-offs of fire salamanders (*Salamandra salamandra*) in northern Europe (Martel *et al.* 2014, p. 631; Fisher 2017, pp. 300–301). Given extensive unregulated trade and the discovery of *Bsal* in Europe in 2010, the introduction of this novel pathogen could cause extirpations of naïve salamander populations in North America (Yap *et al.* 2017, entire) were *Bsal* to be introduced here. Regions with a high risk of introduction of *Bsal* include portions of the southeastern and northeastern United States, two regions that comprise a substantial portion of the eastern hellbender's range (Richgels *et al.* 2016, p. 5; Yap *et al.* 2017, pp. 857–858). Given the high risk of *Bsal* invasion, on January 13, 2016, the Service published in the **Federal Register** (81 FR 1534) an interim rule to list 20 amphibian genera known to carry *Bsal* as injurious under the Lacey Act to limit importation into the United States. Despite this protection, it is possible that an unknown carrier or illegal import could introduce this pathogen into eastern hellbender populations.

Habitat Disturbance

Anthropogenic disturbance in the form of rock-moving by people recreating on rivers is becoming an increasing stressor on eastern hellbenders and can cause mortality. Large shelter rocks are removed to reduce obstructions to recreational canoeing or tubing. Additionally, collection of boulders, rocks, and cobble for landscaping has been suspected in some areas in Missouri (Briggler *et al.* 2007, p. 62). Because large rocks serve as shelter and nesting habitat for adults, and smaller rocks and cobble provide larval and juvenile habitat, moving rocks of any size has the potential to lead to mortality of some life stage. Unger *et al.* (2017, entire) documented

direct mortality to eastern hellbenders as a result of shelter rock disturbance.

Small Populations, Population Fragmentation and Isolation

Many eastern hellbender populations are small and isolated from one another by impoundments and large reaches of unsuitable habitat. This isolation restricts movement among populations and precludes natural recolonization from source populations (Dodd 1997, p. 178; Benstead *et al.* 1999, pp. 662–664; Poff and Hart 2002, p. 660).

Increased Abundance of Species of Predators

Some native predators of the eastern hellbender, such as raccoons, have increased in abundance due to anthropogenic influences, while others have recently been reintroduced into hellbender streams (*e.g.,* river otters). Nonnative predators are also present within a large portion of the eastern hellbender's range and include predatory fish stocked for recreation, such as rainbow trout (*Oncorhynchus mykiss*) and brown trout (*Salmo trutta*) (Mayasich *et al.* 2003, p. 20). Nonnative trout species are thought to directly impact eastern hellbenders by predating on eggs, larvae, sub-adults, and adults, and by impacting hellbenders indirectly through competition for resources.

Climate Change

Average temperatures are expected to rise throughout the range of the eastern hellbender, along with more frequent heat waves and increased periods of drought punctuated by intense rainstorms, likely resulting in elevated stream temperature regimes and lower summer base-flows (Karl *et al.* 2009, pp. 44, 107, 111–112, 117–118), which may affect the subspecies. Migration of eastern hellbenders as an adaptation to climate change is unlikely, due to their limited mobility, high site fidelity, restriction to defined stream systems, and the extensive network of impoundments throughout their range.

Synergistic Effects

In some instances, effects from one threat may increase effects of another threat, resulting in what is referred to as synergistic effects. Synergistic effects often include an increased susceptibility to predation (Moore and Townsend 1998, pp. 332–333), disease (Kiesecker and Blaustein 1995, pp. 11050–11051; Taylor *et al.* 1999, pp. 539–540), or parasites (Kiesecker 2002, pp. 9902–9903; Gendron *et al.* 2003, pp. 472–473). In addition, chronic, increased levels of stress hormones have been shown to inhibit immune response (Rollins-Smith and Blair 1993, pp. 156–159; Romero and Butler 2007, pp. 93–94). Other stressors present in the eastern hellbender's environment (*e.g.,* habitat modification, degraded water quality) could reduce immune response and thereby increase vulnerability to disease and parasites.

Conservation Efforts

Beneficial efforts, primarily of population augmentation, were also ranked by species' experts as an important influence on the eastern hellbender's status. Captive rearing increases the survival rate of young by raising them in captivity to 2 to 4 years of age. Once reared, young are released into the wild to augment existing populations or reintroduced into areas where the species has been extirpated. However, we currently have no data on whether released individuals have successfully reproduced or can successfully reproduce, or the survival rates of any resulting offspring.

In addition, artificial nest boxes have been successfully used for reproduction by hellbenders in Ohio, West Virginia, Missouri, Virginia, and New York. However, the survival of fertilized eggs and larvae from these nest boxes is unknown. Because nest boxes may present a curiosity to stream recreationists, hellbenders occupying the nests are susceptible to disturbance, persecution, and collection if the nest boxes are not properly camouflaged.

Summary of Future Conditions

To assess the future number, health, and distribution of eastern hellbender populations, we asked species' experts for their predictions of the changes in the numbers of stable recruiting, declining, functionally extirpated, and presumed extirpated populations at 10-year, 25-year, and 50-year timeframes under three scenarios: Reasonable worst plausible, reasonable best plausible, and ''most likely'' future plausible scenarios. Most experts had little confidence in predictions beyond 25 years. Using these expert-elicited estimates, we forecast the health and distribution of populations at 10- and 25-year increments for the three future scenarios. The reasonable worst plausible and reasonable best plausible scenarios provide the range of plausible outcomes while the ''most likely'' predictions provide insights to whether the future scenarios are likely to be closer to the upper (reasonable best) or the lower (reasonable worst) predictions.

Projections of the numbers of healthy and extant populations vary between the reasonable worst plausible and reasonable best plausible scenarios, and among the ACUs. For the number of healthy populations, the ''most likely'' scenario is not skewed toward the reasonable best or reasonable worst plausible scenarios for each ACU, but for the number of extant populations, the ''most likely'' scenario varies by ACU. First, we summarize these projections by ACU and then provide a summary across the eastern hellbender's range.

In MACU, future projections indicate there may be 3 to 5 extant populations by year 25, with 4 extant populations under the ''most likely'' scenario. MACU currently has no healthy populations, and this condition would continue under the reasonable worst plausible scenario. Two healthy populations are predicted under the reasonable best plausible scenario. The most important influences affecting eastern hellbender's future status and trends in MACU are sedimentation, water quality degradation, augmentation, disease and pathogens, and habitat disturbance. MACU has a low to moderate risk of *Bsal* introduction (Richgels *et al.* 2016, p. 5) and other potential EIDs. In the event of a disease outbreak, ACU-wide extirpation is likely under the reasonable worst plausible scenario and is about as likely as not under the reasonable best plausible scenario. ACU-wide extirpation is unlikely due to one or more catastrophic chemical pollution events under both scenarios.

In OACU, future projections indicate that there may be 30 to 108 extant populations by year 25, with 88 extant populations under the ''most likely'' scenario prediction. Of those extant populations, 15 (65 percent less than current) to 71 (69 percent more than current) healthy populations are predicted to persist across spatially heterogeneous environmental conditions. The most important influences affecting the eastern hellbender's future status and trends in OACU are sedimentation, water quality degradation, augmentation, small population effects, destruction of habitat, and climate change. Given the predicted future geographic spread of populations within OACU, disease is the only reasonably foreseeable catastrophic event. OACU is at moderate risk of introduction of *Bsal* (Richgels *et al.* 2016, p. 5) and other potential EIDs. In the event of a disease outbreak, the number and spatial extent of populations likely provide sufficient redundancy to protect against extirpation in OACU over the next 25 years under the reasonable best plausible scenario. However, ACU-wide

extirpation due to a catastrophic disease is likely under the reasonable worst plausible scenario.

In TACU, future projections indicate that there may be 112 to 154 extant populations by year 25, with the ''most likely'' scenario prediction skewed toward the reasonable worst plausible scenario. Of those extant populations, 40 (41 percent less than current) to 91 (34 percent more than current) healthy populations are predicted to persist across spatially heterogeneous environmental conditions. The most important influences affecting eastern hellbender's future status and trends in TACU are sedimentation, water quality degradation, mortality, overabundance of predators, and augmentation. Given the predicted future geographic extent of populations within TACU, disease is the only reasonably foreseeable catastrophic event. TACU is at moderate risk of introduction of *Bsal* (Richgels *et al.* 2016, p. 5) and other potential EIDs. In the event of a disease introduction, the number and spatial extent of populations likely provide sufficient redundancy to protect against extirpation in TACU over the next 25 years under the reasonable best plausible scenario. However, ACU-wide extirpation due to a catastrophic disease is likely under the reasonable worst plausible scenario.

In KACU, future projections indicate that there may be 4 to 35 extant populations at year 25, with 13 extant populations under the ''most likely'' scenario prediction. Under the reasonable worst plausible scenario, no healthy populations remain, while under the reasonable best plausible scenario, 13 (19 percent less than current) healthy populations are predicted to persist. The most important influences affecting eastern hellbender future status and trends in KACU are sedimentation, water quality degradation, mortality, augmentation, and small population effects. KACU has a low to moderate risk of introduction of *Bsal* (Richgels *et al.* 2016, p. 5) and other potential EIDs. ACU-wide extirpation due to a disease outbreak is likely under the reasonable worst plausible scenario, but the risk of catastrophic loss under the reasonable best plausible scenario is lower, as there is a greater number and spatial extent of populations predicted. ACU-wide extirpation is unlikely due to one or more catastrophic chemical pollution events under both scenarios.

Rangewide, the number of extant populations is predicted to decrease by 2 to 52 percent over the next 10 years, and then slightly decrease from year 10 to year 25 under both scenarios (see figure 1, below), with the ''most likely'' scenario skewed toward the reasonable worst plausible scenario. Despite these overall losses, multiple healthy populations over a broad geographic range are predicted to persist over the next 25 years (55 to 178 healthy populations, representing a 57-percent decrease to a 40-percent increase from current conditions).

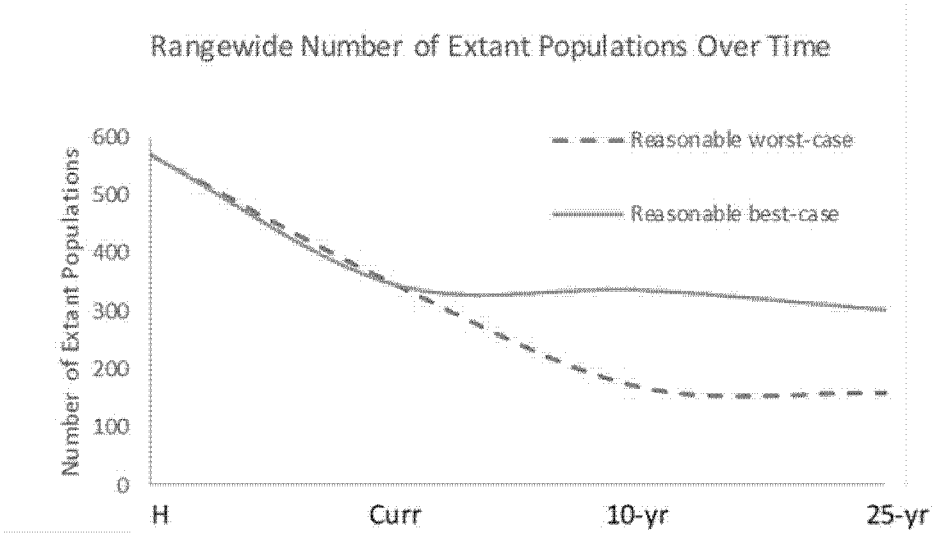

Figure 1. The rangewide number of extant eastern hellbender populations over time.

In summary, stressors are pervasive across the eastern hellbender's range, but the magnitude varies across populations. The primary stressors affecting the eastern hellbender rangewide include sedimentation, water quality degradation, and direct mortality. Although augmentation has the potential to influence the eastern hellbender's status, little data exist as to whether successful sustained reproduction and recruitment can be achieved and whether augmentation is logistically possible at a broad scale. Rangewide, healthy populations are predicted to persist, although with a reduction in geographic range. Across its range, eastern hellbender has a low to moderate risk of exposure to catastrophic events (disease or chemical spills). There is greater vulnerability for ACU-wide extirpation in MACU and KACU due to the low number and reduced distribution of populations. Loss of two ACUs would lead to reductions in genetic and ecological diversity, both of which are potential sources of adaptive diversity. However, the geographically wide distribution of populations in OACU and TACU guard against catastrophic losses rangewide.

Finding

Section 4 of the ESA (16 U.S.C. 1533), and its implementing regulations at 50 CFR part 424, set forth the procedures for determining whether a species is an endangered species or threatened species and should be included on the Federal Lists of Endangered and Threatened Wildlife and Plants. The ESA defines an endangered species as any species that is ''in danger of extinction throughout all or a significant portion of its range'' and a threatened species as any species ''that is likely to become endangered throughout all or a

significant portion of its range within the foreseeable future.''

Under section 4(a)(1) of the ESA, we determine whether a species is an endangered species or threatened species because of any of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. These same factors apply whether we are analyzing the species' status throughout all of its range or throughout a significant portion of its range.

Determination of Status Throughout All of Its Range

The first step in our analysis of the status of a species is to determine its status throughout all of its range. We subsequently examine whether, in light of the species' status throughout all of its range, it is necessary to determine its status throughout a significant portion of its range.

Stressors are pervasive across the eastern hellbender's range, but the magnitude varies across populations. The primary stressors identified for the eastern hellbender include sedimentation (Factor A), water quality degradation (Factor A), and direct mortality (Factor E). In considering the foreseeable future, we forecast the future viability of the species by predicting the responses of the ACUs to conditions under three future scenarios 10 and 25 years into the future. Predictions of the subspecies' response to threats, based on elicitation of species' experts, are reasonably reliable out to 25 years; therefore, we have concluded that 25 years is the foreseeable future for the eastern hellbender.

Our analysis indicates that numerous healthy (resilient) populations will persist over the next 25 years across a broad geographic range, including multiple representation units (ACUs). Although our analysis predicts a population decline over the next 10 years, populations are predicted to be level from year 10 to year 25 under the future scenarios. The risk of exposure to catastrophic events varies across the eastern hellbender's range. While the subspecies' redundancy is lower than in the past, the geographically wide distribution of populations, as well as the low to moderate risk of a catastrophic event, guards against catastrophic losses rangewide. We find that the predicted persistence of healthy populations across multiple ACUs provides redundancy, resiliency, and representation levels that are likely sufficient to sustain the subspecies now and into the future, and we conclude that the eastern hellbender has a low risk of extirpation.

Based on our review of the best available scientific and commercial information pertaining to the five factors, we find that the stressors acting on the eastern hellbender and its habitat, either singly or in combination, are not of sufficient imminence, intensity, or magnitude to indicate that the subspecies is in danger of extinction (an endangered species), or likely to become endangered within the foreseeable future (a threatened species), throughout all of its range.

Determination of Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range (SPR). Having determined that the eastern hellbender is not in danger of extinction now or likely to become so in the foreseeable future throughout all of its range, we next consider whether it may be in danger of extinction or likely to become so in the foreseeable future in an SPR. The range of a species can theoretically be divided into portions in an infinite number of ways, so we first screen the potential portions of the species' range to determine if there are any portions that warrant further consideration. To do this we look for portions of the species' range for which there is substantial information indicating that: (1) The portion may be significant, and (2) the species may be in danger of extinction or likely to become so in the foreseeable future in that portion. No portion would warrant further consideration if, for that portion, either one of these initial elements is not present. Therefore, if we determine that either of the initial elements is not present for a particular portion of the species' range, then the species does not warrant listing because of its status in that portion of its range.

We emphasize that the presence of both of the initial elements is not equivalent to a determination that the species should be listed—rather, it is a determination that a portion warrants further consideration. If we identify any portions that meet both of the initial elements, we conduct a more thorough analysis to determine whether the portion does indeed meet both of the SPR standards: (1) The portion is significant and (2) the species is in danger of extinction or likely to become so in the foreseeable future in that portion. Confirmation that a geographic area does indeed meet one of these standards (either the portion is significant or the species is endangered or threatened in that portion of its range) does not create a presumption, prejudgment, or other determination as to whether the species is endangered or threatened in a significant portion of its range. Rather, we must then undertake a more detailed analysis of the other standard to make that determination. If the portion does indeed meet both SPR standards, then the species is endangered or threatened in that significant portion of its range.

At both stages in this process—the stage of screening potential portions to identify whether any portions warrant further consideration and the stage of undertaking the more-detailed analysis of any portions that do warrant further consideration—it might be more efficient for us to address first the ''significance'' question or the ''status'' question. Our selection of which question to address first for a particular portion depends on the biology of the species, its range, and the threats it faces. Regardless of which question we address first, if we reach a negative answer with respect to the first question that we address, we do not need to evaluate the second question for that portion of the species' range.

For this species, we chose to evaluate the status question (*i.e.,* identifying portions where the eastern hellbender may be in danger of extinction or likely to become so in the foreseeable future) first. The best available information indicates that eastern hellbender populations in MACU and KACU may have lower viability and greater vulnerability to potential future stressors than the other two ACUs. We therefore evaluated whether these two units could be considered ''significant.''

The Service's most-recent definition of ''significant'' has been invalidated by the courts (for example, *Desert Survivors* v. *Dep't of the Interior,* No. 16–cv–01165–JCS (N.D. Cal. Aug. 24, 2018)). Therefore, we identify portions that may be significant by looking for portions of the species' range that could be significant under any reasonable definition of ''significant.'' To do this, we look for any portions that may be biologically important in terms of the resiliency, redundancy, or representation of the species.

Historically and currently, these two units represent a small proportion (10% currently) of the total populations and have a small spatial extent. Because

these two units collectively have few healthy populations, they are not currently contributing in an important way to the subspecies' overall resiliency. If both of these units were extirpated, the subspecies would lose some representation and redundancy, but the loss of this portion of the subspecies' range would still leave sufficient resiliency, redundancy, and representation in the remainder of the subspecies' range such that it would not notably reduce the viability of the subspecies. Therefore, these two ACUs do not represent a significant portion of the subspecies' range, and we conclude that the eastern hellbender is not in danger of extinction or likely to become so in the foreseeable future in a significant portion of its range. Our understanding of ''significance'' in this finding has been arrived at independently and is not precedential. Further, our approach to analyzing SPR in this determination is consistent with the court's holding in *Desert Survivors.*

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the eastern hellbender. Because the subspecies is neither in danger of extinction now nor likely to become so in the foreseeable future throughout all or any significant portion of its range, the subspecies does not meet the definition of an endangered species or threatened species. Therefore, we find that listing the eastern hellbender as an endangered or threatened species under the Act is not warranted at this time. This constitutes the conclusion of the Service's 12-month finding on the 2010 petition to list the hellbender as an endangered or threatened species. A detailed discussion of the basis for this finding can be found in the SSA report and other supporting documents (available on the internet at *http://www.regulations.gov* under Docket No. FWS–R3–ES–2018–0056).

We ask the public to submit to us any new information that becomes available concerning the taxonomy, biology, ecology, status of, or stressors to the eastern hellbender outside of Missouri whenever it becomes available. Please submit any new information, materials, comments, or questions concerning this finding to Patrice Ashfield, Field Supervisor, U.S. Fish and Wildlife Service, Ohio Ecological Services Field Office, 4625 Morse Road, Suite 104, Columbus, OH 43230; telephone 614–416–8993.

Distinct Population Segment (DPS) Analysis

Under the Act, we have the authority to consider for listing any species, subspecies, or, for vertebrates, any distinct population segment (DPS) of these taxa if there is sufficient information to indicate that such action may be warranted. To guide the implementation of the DPS provisions of the Act, we and the National Marine Fisheries Service (National Oceanic and Atmospheric Administration—Fisheries), published the Policy Regarding the Recognition of Distinct Vertebrate Population Segments Under the Endangered Species Act (DPS Policy) in the **Federal Register** on February 7, 1996 (61 FR 4722). Under our DPS Policy, we use two elements to assess whether a population segment under consideration for listing may be recognized as a DPS: (1) The population segment's discreteness from the remainder of the species to which it belongs, and (2) the significance of the population segment to the species to which it belongs. If we determine that a population segment being considered for listing is a DPS, then the population segment's conservation status is evaluated based on the five listing factors established by the Act to determine if listing it as either endangered or threatened is warranted.

MACU consists of Big Piney River, Gasconade River, Meramec River, Niangua River, and their watersheds (see figure 2, below). Meramec River flows directly to Mississippi River, rather than directly to Missouri River, as do the other three rivers. For the purposes of the SSA, we referred to the grouping as the Missouri River drainage. The entirety of MACU occurs within the State of Missouri, and within this proposed rule, we also refer to MACU as the Missouri portion of the eastern hellbender's range. Below, we evaluate the Missouri portion of the eastern hellbender's range to determine whether it meets the definition of a DPS under our DPS Policy.

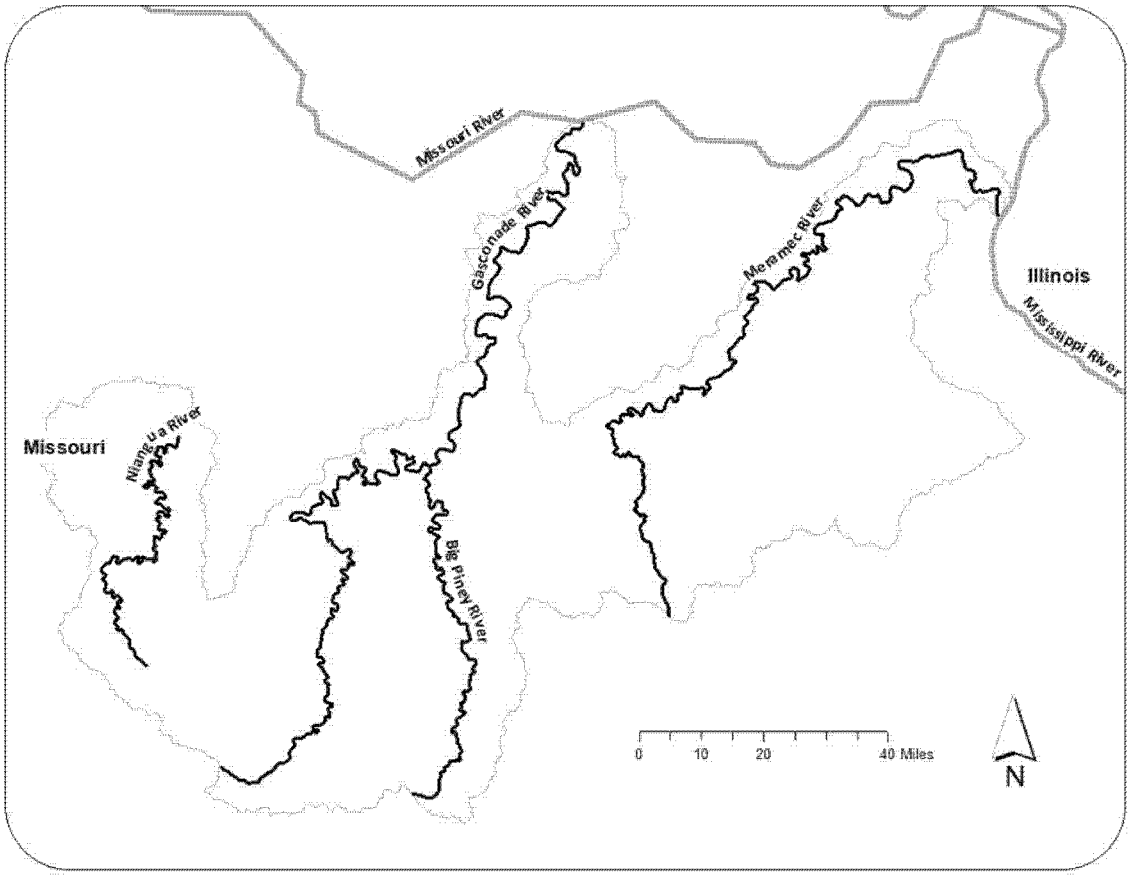

Figure 2. Rivers within the Missouri portion of the eastern hellbender's range or MACU.

Discreteness

Under our DPS Policy, a population segment of a vertebrate taxon may be considered discrete if it satisfies either one of the following conditions: (1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors. Quantitative measures of genetic or morphological discontinuity may provide evidence of this separation; or (2) it is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act.

The Missouri populations of the eastern hellbender are markedly separate from other populations of the subspecies both genetically and by geographic separation. A recent evaluation of genetic markers spread throughout the *Cryptobranchus* genome indicates that the eastern hellbender subspecies consists of four evolutionary lineages that are distinct from each other (Hime *et al.* 2016, pp. 4–13): The Ohio River drainage, the Kanawha River drainage, the Tennessee River drainage, and the Missouri River drainage. More information on the genetic difference between the Missouri River populations and the remainder of the subspecies is discussed below under ''Significance.''

The populations in the Missouri River drainage, referred to here as the Missouri ''population,'' are disjunct from populations of eastern hellbender in the other three drainages. The distance of the geographic separation from other eastern hellbender populations in the other genetic lineages is about 320 river kilometers (200 river miles). Eastern hellbenders occupy small home ranges, and a long distance movement for an eastern hellbender is 13 km (8 mi); therefore, eastern hellbender populations in Missouri do not and will never naturally interact with populations in the other three river drainages.

Based on our review of the available information, we conclude that the Missouri population of the eastern hellbender is markedly separate from other populations of the species due to genetic separation and geographic (physical) isolation from eastern hellbender populations in the eastern United States (see figure 3, below). Therefore, we have determined that the Missouri population of the eastern hellbender meets the condition for discreteness under our DPS policy.

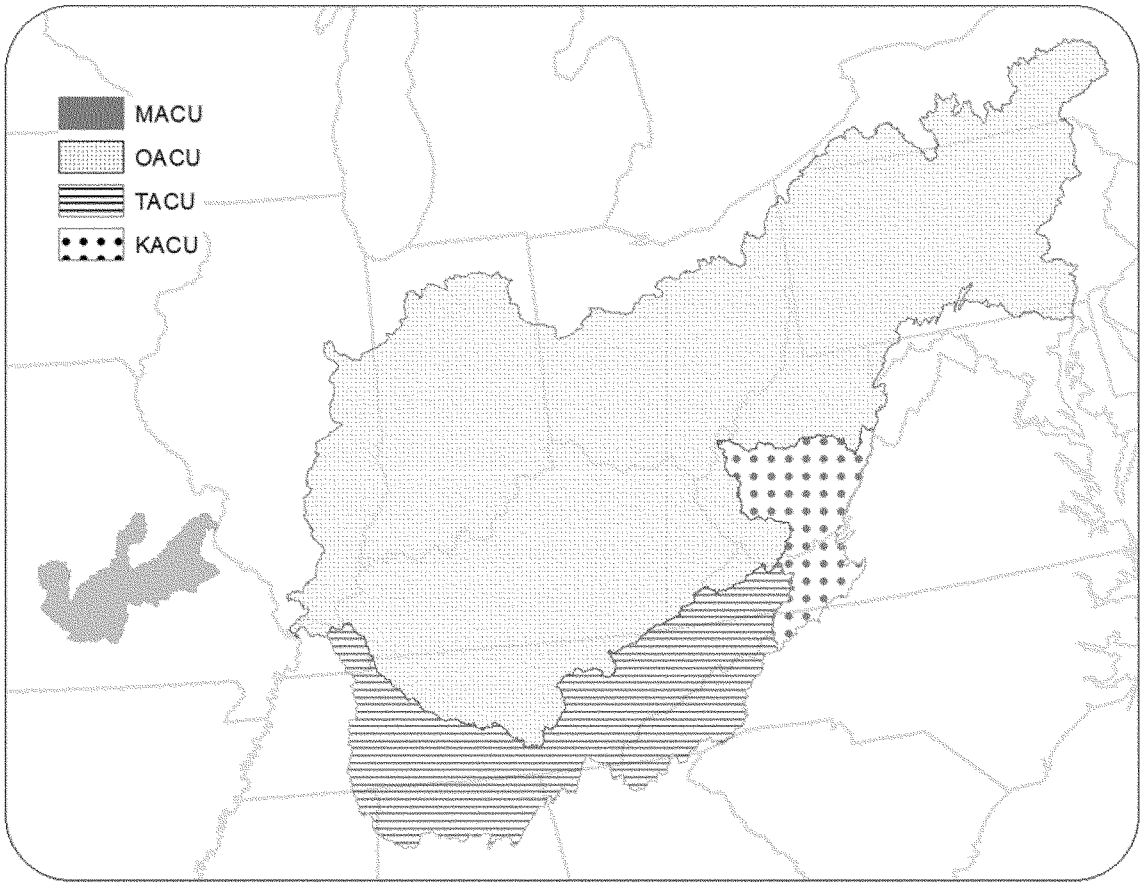

Figure 3. Evolutionary distinct lineages identified within the eastern hellbender subspecies by Hime *et al.* (2016, pp. 4–13).

Significance

Under our DPS Policy, once we have determined that a population segment is discrete, we consider its biological and ecological significance to the larger taxon to which it belongs. This consideration may include, but is not limited to: (1) Evidence of the persistence of the discrete population segment in an ecological setting that is unusual or unique for the taxon, (2) evidence that loss of the population segment would result in a significant gap in the range of the taxon, (3) evidence that the population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historical range, or (4) evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.

Hime *et al.* (2016, p. 12) found that genetic variation within the separate lineages is up to four orders of magnitude lower than the variation among the lineages. These genetic divergences within eastern hellbender lineages may be millions of years old (Hime *et al.* 2016, p. 12) and are likely the result of ancient geologic and climatic events (Sabatino and Routman 2009, p. 1,242). Each of the evolutionary lineages represents a substantial amount of the subspecies' genetic diversity, as well as diverse ecological and physical conditions, which may provide important sources of adaptive diversity for the subspecies. We have substantial evidence that the Missouri population of the eastern hellbender differs markedly in its genetic characteristics, and loss of this genetic diversity would result in loss of the subspecies' adaptive capacity. Thus, this population meets the criteria for significance under our DPS Policy.

DPS Conclusion for the Missouri Population of the Eastern Hellbender

Our DPS policy directs us to evaluate the significance of a discrete population in the context of its biological and ecological significance to the remainder of the species to which it belongs. Based on an analysis of the best available scientific and commercial data, we conclude that the Missouri population segment of the eastern hellbender is discrete due to genetic separation and geographic (physical) isolation from the remainder of the taxon. Furthermore, we conclude that the Missouri discrete population segment of the eastern hellbender is significant because it meets the following criterion to establish significance in the DPS policy: (1) This population differs markedly from the rest of the species because there are genetic characteristics present in this population that are not observed in the remainder of the taxon. Therefore, we conclude that the Missouri population of the eastern hellbender is both discrete and significant under our DPS policy and is, therefore, a listable entity under the Act.

Based on our DPS policy (61 FR 4722; February 7, 1996), if a population segment of a vertebrate species is both discrete and significant relative to the taxon as a whole (*i.e.,* it is a distinct population segment), its evaluation for endangered or threatened status will be based on the Act's definition of those terms and a review of the factors

enumerated in section 4(a) of the Act. Having found that the Missouri population of eastern hellbender meets the definition of a distinct population segment, we now evaluate the status of this population to determine whether it meets the definition of endangered or threatened under the Act.

Determination

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR part 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, we may list a species based on (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the eastern hellbender in Missouri. Our analysis of this information indicates that the most important risk factors affecting the eastern hellbender's current and future status and trends in Missouri are habitat destruction and modification from sedimentation and water quality degradation (Factor A), disease and pathogens (Factor C), and habitat disturbance (Factor A), and these factors are the primary causes of the decrease in eastern hellbender populations in Missouri now and into the future. The unauthorized collection of eastern hellbenders, especially for the pet trade (Factor B), remains a concern despite regulatory mechanisms, such as listing under CITES (Factor D), to reduce or eliminate overexploitation. Other factors, such as an overabundance of predators (Factor C) or population isolation (Factor E), are also affecting eastern hellbenders in Missouri but to a lesser degree. Although conservation efforts, such as population augmentation and artificial nest boxes, are being implemented in Missouri, we have no evidence that they will improve population viability in the long term.

The threats described above have already resulted in the extirpation of one of only five populations (20 percent) of the eastern hellbender in Missouri and the declining condition of the remaining four populations (80 percent). The lack of healthy populations and the limited spatial extent of the Missouri DPS greatly reduce the DPS's resiliency and redundancy (the ability of eastern hellbenders to withstand normal environmental variation, periodic disturbances, stressors, and catastrophes currently and into the future).

The Act defines an endangered species as any species that is ''in danger of extinction throughout all or a significant portion of its range'' and a threatened species as any species that ''is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' We find that the Missouri DPS of the eastern hellbender is presently in danger of extinction throughout its entire range based on the immediacy of threats currently impacting the species. None of the remaining populations is healthy, and all are threatened by a variety of factors acting in combination to reduce the overall viability of the DPS. The lack of healthy populations and their limited spatial extent, coupled with the current and ongoing threats, put the eastern hellbender in Missouri in danger of extinction. Therefore, on the basis of the best available scientific and commercial information, we propose to list the Missouri DPS of the eastern hellbender as endangered in accordance with sections 3(6) and 4(a)(1) of the Act. We find that a threatened species status is not appropriate for the Missouri DPS of the eastern hellbender because of its contracted range, because the threats are occurring rangewide and are not localized, and because the threats are ongoing and expected to continue into the future.

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. Because we have determined that the Missouri DPS of the eastern hellbender is in danger of extinction throughout all of its range, we find it unnecessary to proceed to an evaluation of potentially significant portions of the range. Where the best available information allows the Services to determine a status for the species rangewide, that determination should be given conclusive weight because a rangewide determination of status more accurately reflects the species' degree of imperilment and better promotes the purposes of the Act. Under this reading, we should first consider whether the species warrants listing ''throughout all'' of its range and proceed to conduct a ''significant portion of its range'' analysis if, and only if, a species does not qualify for listing as either an endangered or a threatened species according to the ''throughout all'' language. We note that the court in *Desert Survivors* v. *Department of the Interior,* No. 16–cv–01165–JCS, 2018 WL 4053447 (N.D. Cal. Aug. 24, 2018), did not address this issue, and our conclusion is therefore consistent with the opinion in that case.

Therefore, on the basis of the best available scientific and commercial information, we propose to list the Missouri DPS of the eastern hellbender as an endangered species throughout all of its range in accordance with sections 3(20) and 4(a)(1) of the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened species under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness, and conservation by Federal, State, Tribal, and local agencies; private organizations; and individuals. The Act encourages cooperation with the States and other countries, and calls for recovery actions to be carried out for listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Subsection 4(f) of the Act calls for the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning includes the development of a recovery outline shortly after a species is listed and preparation of a draft and final recovery plan. The recovery outline guides the immediate implementation of urgent recovery actions and provides interim guidance for the management and conservation of newly listed species during the time between the final listing and completion of a recovery plan. The recovery plan identifies recovery criteria that indicate when a species may be ready for downlisting (*i.e.,* reclassification from endangered status

to threatened status) or delisting (*i.e.,* removal from the Lists of Endangered and Threatened Wildlife and Plants), actions necessary to achieve recovery and their estimated costs, and methods for monitoring recovery progress. The recovery plan may be revised to address continuing or new threats to the species, as new substantive information becomes available. When completed, the recovery outline, draft recovery plan, and the final recovery plan will be available on our website (*http://www.fws.gov/endangered*), or from our Missouri Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally needs the participation of a broad range of partners, including other Federal agencies, States, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (*e.g.,* restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands. If we list the Missouri DPS of the eastern hellbender, funding for recovery actions would be available from a variety of sources, including Federal budgets, State programs, and cost share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the State of Missouri would be eligible for Federal funds to implement management actions that promote the protection or recovery of the Missouri DPS of the eastern hellbender. Information on our grant programs that are available to aid species recovery can be found at: *http://www.fws.gov/grants.*

Although the Missouri DPS of the eastern hellbender is only proposed for listing under the Act at this time, please let us know if you are interested in participating in recovery efforts for this DPS. Additionally, we invite you to submit any new information on this DPS whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as an endangered or threatened species and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

Federal agency actions within the DPS' habitat that may require conference or consultation or both as described in the preceding paragraph include management and any other landscape-altering activities, particularly those affecting water quality or instream habitat, on Federal lands administered by the U.S. Forest Service and Department of Defense; issuance of section 404 Clean Water Act (33 U.S.C. 1251 *et seq.*) permits by the U.S. Army Corps of Engineers; and construction and maintenance of roads or highways by the Federal Highway Administration.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to endangered wildlife. The prohibitions of section 9(a)(1) of the Act, codified at 50 CFR 17.21, make it illegal for any person subject to the jurisdiction of the United States to take (which includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these) endangered wildlife within the United States or on the high seas. In addition, it is unlawful to import; export; deliver, receive, carry, transport, or ship in interstate or foreign commerce in the course of commercial activity; or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to employees of the Service, the National Marine Fisheries Service, other Federal land management agencies, and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22. With regard to endangered wildlife, a permit may be issued for the following purposes: For scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities. There are also certain statutory exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a proposed listing on proposed and ongoing activities within the range of the species proposed for listing.

Based on the best available information, the following actions are unlikely to result in a violation of section 9, if these activities are carried out in accordance with existing regulations and permit requirements; this list is not comprehensive:

(1) Activities authorized, funded, or carried out by Federal agencies, when such activities are conducted in accordance with an incidental take statement issued by us under section 7 of the Act;

(2) Any action carried out for scientific research or to enhance the propagation or survival of the Missouri DPS of the eastern hellbender that is conducted in accordance with the conditions of a permit issued by the Service under 50 CFR 17.22; and

(3) Any incidental take of Missouri eastern hellbenders resulting from an otherwise lawful activity conducted in accordance with the conditions of an incidental take permit issued by the Service under 50 CFR 17.22. Non-Federal applicants may design a habitat conservation plan (HCP) for the DPS and apply for an incidental take permit. HCPs may be developed for listed species and are designed to minimize and mitigate impacts to the species to the maximum extent practicable.

We will review other activities not identified above on a case-by-case basis to determine whether they may be likely to result in a violation of section 9 of the Act. We do not consider these lists to be exhaustive and provide them as information to the public.

Based on the best available information, the following activities may potentially result in a violation of section 9 of the Act; this list is not comprehensive:

(1) Unauthorized killing, collecting, handling, or harassing of individual eastern hellbenders at any life stage in Missouri;

(2) Sale or offer for sale of any Missouri eastern hellbender, as well as delivering, receiving, carrying, transporting, or shipping any Missouri eastern hellbender in interstate or foreign commerce and in the course of a commercial activity;

(3) Unauthorized destruction or alteration of the DPS' habitat (for example, instream dredging, channelizing, impounding of water, streambank clearing, removing large rocks from or flipping large rocks within streams, discharging fill material) that actually kills or injures individual eastern hellbenders in Missouri by significantly impairing their essential behavioral patterns, including breeding, feeding, or sheltering;

(4) Violation of any discharge or water withdrawal permit within the DPS' occupied range that results in the death or injury of individual eastern hellbenders by significantly impairing their essential behavioral patterns, including breeding, feeding, or sheltering; and

(5) Discharge or dumping of toxic chemicals or other pollutants into waters supporting the DPS that actually kills or injures individual eastern hellbenders by significantly impairing their essential behavioral patterns, including breeding, feeding, or sheltering.

Questions regarding whether specific activities might constitute a violation of section 9 of the Act should be directed to the Missouri Ecological Services Field Office, 101 Park DeVille Drive, Suite A, Columbia, MO 65203; telephone 573–234–2132.

Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (a) essential to the conservation of the species and (b) which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner seeks or requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

Prudency Determination

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12), require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that the designation of critical habitat is not prudent when one or both of the following circumstances exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

Designation of critical habitat requires the publication of maps and a narrative description of specific critical habitat areas in the **Federal Register**. The degree of detail in those maps and boundary descriptions is greater than the general location descriptions provided in this proposal to list the Missouri DPS as endangered. We are concerned that designation of critical habitat would more widely announce the exact locations of eastern hellbenders to collectors. We believe that the publication of maps and descriptions outlining the locations of eastern hellbenders will further facilitate unauthorized collection and trade, as collectors will know the exact locations where eastern hellbenders occur.

The unauthorized collection of eastern hellbenders for the pet trade is a factor contributing to hellbender declines and remains a threat today. Eastern hellbenders are easily collected because they are slow moving and have extremely small home ranges. Therefore, publishing specific location information would provide a high level of assurance that any person going to a specific location would be able to successfully locate and collect specimens given the subspecies' site fidelity and ease of capture once located. For a detailed discussion on the threat of commercial collection, refer to the SSA report (Service 2018, pp. 40–42).

In conclusion, we find that the designation of critical habitat is not prudent for the Missouri DPS of the eastern hellbender, in accordance with 50 CFR 424.12(a)(1), because the eastern hellbender faces a threat of unauthorized collection and trade, and designation can reasonably be expected to increase the degree of these threats to the subspecies.

Required Determinations

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

National Environmental Policy Act

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), need not be prepared in connection with listing a species as an endangered or threatened species under the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes. We have no records of the Missouri DPS of the eastern hellbender occurring on tribal lands.

References Cited

A complete list of references cited in this proposed rule is available on the internet at *http://www.regulations.gov* and upon request from the Missouri Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are the staff members of the Service's Midwest Regional Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. Amend § 17.11(h) by adding an entry for ''Hellbender, eastern [Missouri DPS]'' to the List of Endangered and Threatened Wildlife in alphabetical order under AMPHIBIANS to read as set forth below:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
* * * * *				
AMPHIBIANS				
* * * * *				
Hellbender, eastern [Missouri DPS] ...	*Cryptobranchus alleganiensis alleganiensis.*	Missouri	E	[**Federal Register** citation when published as a final rule.]
* * * * *				

Dated: March 27, 2019.

Margaret E. Everson,

Principal Deputy Director, Exercising the Authority of the Director, for the U.S. Fish and Wildlife Service.

[FR Doc. 2019–06536 Filed 4–3–19; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[4500090022]

Endangered and Threatened Wildlife and Plants; 12-Month Findings on Petitions To List Eight Species as Endangered or Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition findings.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce 12-month findings on petitions to list eight species as endangered or threatened species under the Endangered Species Act of 1973, as amended (Act). After a thorough review of the best available scientific and commercial information, we find that it is not warranted at this time to list the Arkansas mudalia, ashy darter, Barrens darter, Chihuahua scurfpea, coldwater crayfish, Eleven

Point River crayfish, Spring River crayfish, and red-crowned parrot. However, we ask the public to submit to us at any time any new information that becomes available relevant to the status of any of the species mentioned above or their habitats.

DATES: The findings in this document were made on April 4, 2019.

ADDRESSES: Detailed descriptions of the basis for each of these findings are available on the internet at *http://www.regulations.gov* under the following docket numbers:

Species	Docket No.
Arkansas mudalia	FWS–R4–ES–2019–0003
Ashy darter	FWS–R4–ES–2018–0059
Barrens darter	FWS–R4–ES–2018–0060
Chihuahua scurfpea	FWS–R2–ES–2018–0061
Coldwater crayfish, Eleven Point River crayfish, and Spring River crayfish	FWS–R3–ES–2019–0002
Red-crowned parrot	FWS–R2–ES–2018–0063

Supporting information used to prepare these findings is available for public inspection, by appointment, during normal business hours, by contacting the appropriate person, as specified under **FOR FURTHER INFORMATION CONTACT**. Please submit any new information, materials, comments, or questions concerning these findings to the appropriate person, as specified under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT:

Species	Contact information
Arkansas mudalia	Melvin Tobin, Field Supervisor, Arkansas Ecological Services Field Office, 501–513–4473.
Ashy darter	Michelle Eversen, Area Supervisor, Tennessee Ecological Services Field Office, 404–679–4108.
Barrens darter	Warren Stiles, Fish and Wildlife Biologist, Tennessee Ecological Services Field Office, 931–528–6481.
Chihuahua scurfpea	Mark W. Horner, Fish and Wildlife Biologist, New Mexico Ecological Services Field Office, 505–761–4723.
Coldwater crayfish, Eleven Point River crayfish, and Spring River crayfish.	Karen Herrington, Field Supervisor, Missouri Ecological Services Field Office, 573–234–2132, ext. 166.
Red-crowned parrot	Gretchen E. Nareff, Fish and Wildlife Biologist, Texas Coastal Ecological Services Field Office, 361–225–7318.

If you use a telecommunications device for the deaf (TDD), please call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

We are required to make a finding whether or not the petitioned action is warranted within 12 months after receiving any petition we determined contained substantial scientific or commercial information indicating that the petitioned action may be warranted (section 4(b)(3)(B) of the Act (16 U.S.C. 1531 *et seq.*)) (''12-month finding''). We must make a finding that the petitioned action is: (1) Not warranted; (2) warranted; or (3) warranted but precluded. ''Warranted but precluded'' means that (a) the petitioned action is warranted, but the immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are endangered or threatened species, and (b) expeditious progress is being made to add qualified species to the Lists of Endangered and Threatened Wildlife and Plants (Lists) and to remove from the Lists species for which the protections of the Act are no longer necessary. Section 4(b)(3)(C) of the Act requires that we treat a petition for which the requested action is found to be warranted but precluded as though resubmitted on the date of such finding, that is, requiring that a subsequent finding be made within 12 months of that date. We must publish these 12-month findings in the **Federal Register**.

Summary of Information Pertaining to the Five Factors

Section 4 of the Act (16 U.S.C. 1533) and the implementing regulations at part 424 of title 50 of the Code of Federal Regulations (50 CFR part 424) set forth procedures for adding species to, removing species from, or reclassifying species on the Lists. The Act defines ''endangered species'' as any species that is in danger of extinction throughout all or a significant portion of its range (16 U.S.C. 1532(6)), and ''threatened species'' as any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range (16 U.S.C. 1532(20)). Under section 4(a)(1) of the Act, a species may be determined to be an endangered species or a threatened species because of any of the following five factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

In considering whether a species may meet the definition of an endangered species or a threatened species because of any of the five factors, we must look beyond the mere exposure of the species to the stressor to determine whether the species responds to the stressor in a way that causes actual impacts to the species. If there is exposure to a stressor, but no response, or only a positive response, that stressor does not cause a species to meet the definition of an endangered species or a threatened species. If there is exposure and the species responds negatively, we determine whether that stressor drives or contributes to the risk of extinction of the species such that the species warrants listing as an endangered or threatened species. The mere identification of stressors that could

affect a species negatively is not sufficient to compel a finding that listing is or remains warranted. For a species to be listed or remain listed, we require evidence that these stressors are operative threats to the species and its habitat, either singly or in combination, to the point that the species meets the definition of an endangered or a threatened species under the Act.

In conducting our evaluation of the five factors provided in section 4(a)(1) of the Act to determine whether the Arkansas mudalia (*Leptoxis arkansensis*), ashy darter (*Etheostoma cinereum*), Barrens darter (*Etheostoma forbesi*), *Pediomelum pentaphyllum* (Chihuahua scurfpea), coldwater crayfish (*Faxonius eupunctus*), Eleven Point River crayfish (*Faxonius wagneri*), Spring River crayfish (*Faxonius roberti*), and red-crowned parrot (*Amazona viridigenalis*) meet the definition of ''endangered species'' or ''threatened species,'' we considered and thoroughly evaluated the best scientific and commercial information available regarding the past, present, and future stressors and threats. We reviewed the petitions, information available in our files, and other available published and unpublished information. These evaluations may include information from recognized experts; Federal, State, and tribal governments; academic institutions; foreign governments; private entities; and other members of the public.

The species assessment forms for the Arkansas mudalia, ashy darter, Barrens darter, Chihuahua scurfpea, coldwater crayfish, Eleven Point River crayfish, Spring River crayfish, and red-crowned parrot contain more detailed biological information, a thorough analysis of the listing factors, and an explanation of why we determined that these species do not meet the definition of an endangered species or a threatened species. This supporting information can be found on the internet at *http://www.regulations.gov* under the appropriate docket number (see **ADDRESSES**, above). The following are informational summaries for each of the findings in this document.

Arkansas Mudalia

Previous Federal Actions

On April 20, 2010, we received a petition from the Center for Biological Diversity, Alabama Rivers Alliance, Clinch Coalition, Dogwood Alliance, Gulf Restoration Network, Tennessee Forests Council, and West Virginia Highlands Conservancy to list 404 aquatic, riparian, and wetland species, including the Arkansas mudalia, as endangered or threatened species under the Act. On September 27, 2011, we published a 90-day finding in the **Federal Register** (76 FR 59836), concluding that the petition presented substantial information indicating the Arkansas mudalia may warrant listing. This document constitutes the 12-month finding on the April 20, 2010, petition to list the Arkansas mudalia under the Act.

Summary of Finding

The Arkansas mudalia is a freshwater snail. Its body is dark orange mottled with black and ranges in size from 7.9 to 12.2 millimeters (0.3 to 0.5 inches). Although information on its life cycle is limited, individuals likely live for 2 years and reproduce only once before death. Reproduction occurs during the spring through midsummer, and individuals need a hard, clean substrate on which to lay eggs.

The Arkansas mudalia is endemic to the White River and its tributaries in Arkansas and Missouri. The species inhabits medium- to large-sized rivers in areas of relatively fast current with course rocky substrate. The dispersal of the Arkansas mudalia is slow and restricted. Like most freshwater snails, individuals likely move much less than 1 kilometer (0.6 miles) per year. Therefore, to maintain genetic diversity and reduce the risk of extirpation, it is beneficial for multiple populations to exist in close proximity to facilitate mixing and recolonization.

We have carefully assessed the best scientific and commercial information regarding the past, present, and future threats to the Arkansas mudalia, and we evaluated all relevant factors under the five listing factors, including any regulatory mechanisms and conservation measures addressing these stressors. The primary stressors are those related to water quality, including impoundments, contaminants, sedimentation, reduced range or isolation, and climate change.

We found that the Arkansas mudalia is extant at 13 of 19 historically known sites spread through five tributaries of the White River drainage. Since 2005, several new populations have been discovered outside the historical range, indicating that the current range is larger than previously thought, although the populations are now isolated from those in other tributaries. Despite historical habitat modification and destruction from dams, which led to extirpation of some populations, extant populations appear sufficiently resilient to natural stochastic events as long as suitable habitat remains. Four newly discovered populations occur on U.S. Forest Service land, where pressures from habitat modification and degradation are minimal. In addition, the species is well represented in the White River watershed, existing in the North Fork White River watershed with multiple populations spread throughout the main stem North Fork River and some tributaries. Therefore, a single catastrophic event is unlikely to extirpate all populations within this watershed, and recolonization would likely be possible.

For these reasons, we find that these stressors do not, alone or in combination, rise to a level that causes this species to meet the definition of an endangered species or a threatened species. Therefore, we find that listing the Arkansas mudalia as an endangered species or threatened species is not warranted. A detailed discussion of the basis for this finding can be found in the Arkansas mudalia species assessment form and other supporting documents (see **ADDRESSES**, above).

Ashy Darter

Previous Federal Actions

On April 20, 2010, we received a petition from the Center for Biological Diversity, Alabama Rivers Alliance, Clinch Coalition, Dogwood Alliance, Gulf Restoration Network, Tennessee Forests Council, and West Virginia Highlands Conservancy to list 404 aquatic, riparian, and wetland species, including the ashy darter, as endangered or threatened species under the Act. On September 27, 2011, we published a 90-day finding in the **Federal Register** (76 FR 59836), concluding that the petition presented substantial information indicating that listing the ashy darter may be warranted. This notice constitutes the 12-month finding on the April 20, 2010, petition to list the ashy darter under the Act.

Summary of Finding

The ashy darter is a fish in the family Percidae that is endemic to the Tennessee River system in Alabama, Georgia, Tennessee, and Virginia. The ashy darter is large relative to most other darter species, attaining a maximum total length of about 100 millimeters (3.9 inches). Normal life span for the ashy darter is 3 to 4 years, and spawning occurs from January to mid-April. The primary prey items of the ashy darter are midge larvae, burrowing mayfly larvae, and oligochaete worms.

The ashy darter occurs in medium-sized streams with silt-free substrates. These are typically clear, cool- to warm-water streams with a moderate gradient.

The ashy darter tends to occupy depths of 1.6 to 6.6 feet (0.5 to 2 meters) in areas of bedrock or clean gravel substrate with rocks and boulders. In the upper Tennessee River system, the species occupies backwater or pool habitats with slab rocks containing a slight layer of silt. The ashy darter has been found in close proximity to or underneath boulders and in or near beds of water willow.

We have carefully assessed the best scientific and commercial information regarding the past, present, and future threats to the ashy darter, and we evaluated all relevant factors under the five listing factors, including any regulatory mechanisms and conservation measures addressing these stressors. The primary stressors are impoundments, physical habitat disturbance, contaminants, sedimentation, reduced range, and climate change.

The ashy darter is present in six tributaries to the Tennessee River, which are isolated from one another by large impoundments. Currently, the species has two populations with high resilience (referring to the species' ability to withstand environmental or demographic stochastic disturbance), three populations with moderate resilience, and one that has unknown resilience. Two populations that have been extirpated since around 1854 and 1953. We estimate that the ashy darter has a medium adaptive potential (or representation) and despite the isolation of populations, the species' representation has been strengthened by its expansion in the Clinch River, and continues to be supported by its widespread occurrence and persistence throughout most of its historical range. The ashy darter has multiple populations occurring over a wide extent across the Tennessee River watershed, in the Upper Tennessee, Elk River, and Duck River management units, and all physiographic provinces where the species is native. The ashy darter has medium redundancy (referring to the species' ability to withstand catastrophic events) because it maintains all but two historical populations.

Overall, we find that the stressors acting on the species and its habitat, either singly or in combination, are not of sufficient imminence, intensity, or magnitude to indicate that the species meets the definition of an endangered species or a threatened species throughout all or a significant portion of its range. Therefore, we find that listing the ashy darter as endangered or threatened is not warranted. A detailed discussion of the basis for this finding can be found in the ashy darter species assessment form and other supporting documents (see **ADDRESSES**, above).

Barrens Darter

Previous Federal Actions

On April 20, 2010, we received a petition from the Center for Biological Diversity, Alabama Rivers Alliance, Clinch Coalition, Dogwood Alliance, Gulf Restoration Network, Tennessee Forests Council, and West Virginia Highlands Conservancy to list 404 aquatic, riparian, and wetland species, including the Barrens darter, as endangered or threatened species under the Act. On September 27, 2011, we published a 90-day finding in the **Federal Register** (76 FR 59836), concluding that the petition presented substantial information indicating that listing the Barrens darter may be warranted. This notice constitutes the 12-month finding on the April 20, 2010, petition to list the Barrens darter under the Act.

Summary of Finding

The Barrens darter is a small, drab, benthic fish, with a maximum length of 97 millimeters (3.8 inches). The species is highly endemic, with a very narrow distribution in Middle Tennessee in the headwaters of the Collins River, which is a tributary of the Caney Fork River in the Cumberland River Drainage. It is restricted to small headwater streams, although it may disperse to other headwater habitats via larger downstream reaches.

Slabrock cobble substrate provides cover for all life stages and is an important habitat feature for spawning, which occurs in April and May. During the spawning season, Barrens darters congregate in shallow riffle and run areas with roughly 4- to 12-inch slab rock cobble with cavities underneath. The species has a life span of approximately 3 years.

We have carefully assessed the best scientific and commercial information regarding the past, present, and future threats to the Barrens darter, and we evaluated all relevant factors under the five listing factors, including any regulatory mechanisms and conservation measures addressing these stressors. The primary stressors are water pollution, sedimentation, hybridization with the fringed darter, and effects of climate change.

The historical range of Barrens darter populations is small and has been reduced by the loss of two of seven populations. Species' redundancy and representation have always been low and are likely the natural condition. Three populations currently have moderate to high resiliency, while two have low resiliency due to a combination of factors, including presence of or close proximity to fringed darters, low approximate abundance, and reduced habitat and water quality. We conclude that stressors related to habitat quality (*e.g.,* sedimentation, scouring or loss of slabrock cobble from the streambed) will likely impact the species in the future; however, the overall condition of the species is not predicted to change significantly from these impacts within the foreseeable future.

We find that the stressors acting on the species and its habitat, either singly or in combination, are not of sufficient imminence, intensity, or magnitude to indicate that the species meets the definition of an endangered species or a threatened species throughout all or a significant portion of its range. Therefore, we find that listing the Barrens darter as endangered or threatened is not warranted. A detailed discussion of the basis for this finding can be found in the Barrens darter species assessment form and other supporting documents (see **ADDRESSES**, above).

Chihuahua Scurfpea

Previous Federal Actions

On June 25, 2007, we received a petition from WildEarth Guardians (then Forest Guardians) to list 475 species in the southwestern United States, including Chihuahua scurfpea, as endangered or threatened under the Act. On October 15, 2008, we received an additional petition from WildEarth Guardians requesting that we list Chihuahua scurfpea, specifically, as endangered or threatened. On December 16, 2009, we published a 90-day finding in the **Federal Register** (74 FR 66866) in which we determined that the petitions presented substantial scientific and commercial information indicating that listing Chihuahua scurfpea may be warranted. This notice constitutes the 12-month finding on the June 25, 2007, and October 15, 2008, petitions to list Chihuahua scurfpea under the Act.

Summary of Finding

Chihuahua scurfpea is a perennial herb in the legume family that grows to approximately 25 centimeters (9.8 inches) in height. Flowers are pea-like with purple and white petals, and the fruit is a small pod 7 to 8 millimeters (0.28 to 0.31 inches) long. The species was known to occur historically in New Mexico; Arizona; Chihuahua, Mexico; and possibly western Texas. It is known

currently from southwestern New Mexico and southeastern Arizona.

The species occurs in deserts and xeric shrublands of the Apache Highlands and Chihuahuan Desert ecoregions. Chihuahua scurfpea is found in areas of deep, sandy soils, occupying areas of bare ground between desert shrubs. Average annual precipitation in these regions is approximately 382 millimeters (15 inches), with 50 percent of precipitation occurring during the North American monsoon season. For much of the year, Chihuahua scurfpea exists below ground as a dormant tuber-like taproot, which fosters some degree of drought tolerance. In spring and again during the monsoon season (July to August), ample precipitation stimulates aboveground emergence, beginning the reproductive cycle. Spring flowering occurs primarily in April and May, and monsoon flowering occurs mainly in July and August.

We evaluated all relevant stressors under the five factors, including any regulatory mechanisms and conservation measures addressing these stressors. The primary stressors include herbicide used for grassland restoration, decreased precipitation from climate change, and surface disturbance. We find that although the herbicide Tebuthiuron is toxic to Chihuahua scurfpea, individuals and populations are capable of survival after herbicide treatment, provided there is sufficient precipitation. We assessed projected changes in precipitation due to climate change and found that projected precipitation levels are anticipated to be sufficient for the species' needs, including following potential impacts from Tebuthiuron application. Regarding surface disturbance, none of the potential sources of disturbance was found to occur at levels that would impact populations now or in the foreseeable future.

For these reasons, we find that these stressors do not, alone or in combination, rise to a level that causes this species to meet the definition of an endangered species or a threatened species. Therefore, we find that listing Chihuahua scurfpea as an endangered species or threatened species is not warranted. A detailed discussion of the basis for this finding can be found in the Chihuahua scurfpea species assessment form and other supporting documents (see **ADDRESSES**, above).

Coldwater Crayfish, Eleven Point River Crayfish, Spring River Crayfish

Previous Federal Actions

On April 20, 2010, we received a petition from the Center for Biological Diversity, Alabama Rivers Alliance, Clinch Coalition, Dogwood Alliance, Gulf Restoration Network, Tennessee Forests Council, and West Virginia Highlands Conservancy to list 404 aquatic, riparian, and wetland species, including the coldwater crayfish, as endangered or threatened species under the Act. On September 27, 2011, we published a 90-day finding in the **Federal Register** (76 FR 59836), concluding that the petition presented substantial information indicating the coldwater crayfish may warrant listing. Subsequently, a genetic and morphological study found that the coldwater crayfish is actually a taxon composed of three species: The coldwater crayfish, Eleven Point River crayfish, and Spring River crayfish. Therefore, we decided to evaluate the status of all three species. This document constitutes the 12-month finding on the April 20, 2010, petition to list the coldwater crayfish under the Act.

Summary of Finding

The coldwater crayfish, Eleven Point River crayfish, and Spring River crayfish are small, stout crayfish with blue-green heads and pincers, and reddish-brown thoraxes and abdomens. Adults are 30.5 to 71.1 millimeters (1.2 to 2.8 inches) long, with males and females generally similar in size. These crayfish species inhabit large, cold, clear permanent streams with strong, fast-flowing currents. The coldwater crayfish and Eleven Point River crayfish also inhabit pools, while the Spring River crayfish is most commonly found in riffle areas with substrate of cobble and gravel. All three species are found primarily in large order, spring-fed streams with high velocities.

The three crayfish species are found in three watersheds in Arkansas and Missouri. The coldwater crayfish and Eleven Point River crayfish are each comprised of a single population in the Eleven Point River watershed. The Spring River crayfish is comprised of three populations in the Spring River and Strawberry River watersheds.

We have carefully assessed the best scientific and commercial information regarding the past, present, and future threats to the coldwater crayfish, Eleven Point River crayfish, and Spring River crayfish, and we evaluated all relevant factors under the five listing factors, including any regulatory mechanisms and conservation measures addressing these stressors. The primary stressors affecting the coldwater crayfish, Eleven Point River crayfish, and Spring River crayfish include displacement by invasive crayfish species and degraded water quality (including, but not limited to, sedimentation).

Despite impacts from these stressors and some decline in abundance, the species have maintained resilient populations over time. Although we predict some continued impacts from these stressors in the future, we anticipate these species will continue to have resilient populations that are distributed widely throughout their ranges.

For these reasons, we find that these stressors do not, alone or in combination, rise to a level that causes these species to meet the definition of an endangered species or a threatened species. Therefore, we find that listing the coldwater crayfish, Eleven Point River crayfish, and Spring River crayfish as an endangered species or threatened species is not warranted. A detailed discussion of the basis for this finding can be found in the coldwater crayfish, Eleven Point River crayfish, and Spring River crayfish species assessment forms and other supporting documents (see **ADDRESSES**, above).

Red-Crowned Parrot

Previous Federal Actions

On January 29, 2008, we received a petition from Friends of Animals requesting that we list 14 parrot species, including the red-crowned parrot, as endangered or threatened species under the Act. On July 14, 2009, we published a 90-day finding in the **Federal Register** (74 FR 33957) in which we determined that the petition presented substantial scientific and commercial information to indicate that listing the red-crowned parrot may be warranted. On October 6, 2011, we published a 12-month finding in the **Federal Register** (76 FR 62016) in which we stated that listing the red-crowned parrot as endangered or threatened was warranted primarily due to habitat loss and collection for the pet trade in Mexico and the inadequacy of regulatory mechanisms. However, listing was precluded at that time by higher priority actions, and the species was added to the candidate species list. From 2012 through 2016, we addressed the status of the red-crowned parrot annually in our candidate notice of review, with the determination that listing was warranted but precluded (see 77 FR 69994, November 21, 2012; 78 FR 70104, November 22, 2013; 79 FR 72450, December 5, 2014; 80 FR 80584,

December 24, 2015; 81 FR 87246, December 2, 2016).

Summary of Finding

The red-crowned parrot is medium-sized (33 centimeters (13 inches)) and is bright green with a red crown and blue head and neck. The species is native to forests in northeastern Mexico; however, the range has expanded within the past several decades into ranchlands and urban areas in and adjacent to its historical range in Mexico and into cities in the Lower Rio Grande Valley of south Texas.

Red-crowned parrots are cavity nesters, using pre-existing cavities in a variety of native tree species in Mexico and ornamental palms in residential areas of south Texas. The species eats a variety of nuts, berries, seeds, fruits, and flowers, using primarily native plants in forests and ranchlands in Mexico, and foraging on ornamental and fruit and nut trees in urban and suburban areas of Mexico and south Texas.

We evaluated all relevant stressors under the five factors, including any regulatory mechanisms and conservation measures addressing these stressors. The primary stressors include habitat loss and collection for the pet trade. We find that, although much of the red-crowned parrot's native forest habitat in Mexico was removed throughout the 20th century, logging has declined over the past three decades, and forest regeneration has occurred in some areas. In addition, red-crowned parrot populations have become established in ranchland habitats in Mexico and in urban habitats in Mexico and south Texas, where resources for nesting and foraging have allowed for stable or increasing population sizes. Collection for the pet trade led to decreased population sizes in Mexico throughout the early to mid-20th century. However, laws passed between 1982 and 2008 in Mexico banned the collection and export of parrots, and greatly reduced the numbers of red-crowned parrots captured for the pet trade.

For these reasons, we find that these stressors do not, alone or in combination, rise to a level that causes this species to meet the definition of an endangered species or a threatened species. Therefore, we find that listing the red-crowned parrot as an endangered species or threatened species is not warranted. A detailed discussion of the basis for this finding can be found in the red-crowned parrot species assessment form and other supporting documents (see **ADDRESSES**, above).

New Information

We request that you submit any new information concerning the taxonomy of, biology of, ecology of, status of, or stressors to the Arkansas mudalia, ashy darter, Barrens darter, Chihuahua scurfpea, coldwater crayfish, Eleven Point River crayfish, Spring River crayfish, and red-crowned parrot to the appropriate person, as specified under **FOR FURTHER INFORMATION CONTACT**, whenever it becomes available. New information will help us monitor these species and make appropriate decisions about their conservation and status. We encourage local agencies and stakeholders to continue cooperative monitoring and conservation efforts.

References Cited

Lists of the references cited in the petition findings are available on the internet at *http://www.regulations.gov* in the dockets provided above in **ADDRESSES** and upon request from the appropriate person, as specified under **FOR FURTHER INFORMATION CONTACT**.

Authors

The primary authors of this document are the staff members of the Species Assessment Team, Ecological Services Program.

Authority

The authority for this action is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: March 27, 2019.

Margaret E. Everson,

Principal Deputy Director, U.S. Fish and Wildlife Service, Exercising the Authority of the Director, U.S. Fish and Wildlife Service.

[FR Doc. 2019–06535 Filed 4–3–19; 8:45 am]

BILLING CODE 4333–15–P

Notices

Federal Register

Vol. 84, No. 65

Thursday, April 4, 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

Animal and Plant Health Inspection Service

[Docket No. APHIS–2018–0014]

BASF Plant Science, LP; Availability of a Draft Plant Pest Risk Assessment and Draft Environmental Assessment for Canola Genetically Engineered for Altered Oil Profile and Resistance to an Imidazolinone Herbicide

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service is making available for public comment a draft plant pest risk assessment (PPRA) and draft environmental assessment (EA) for canola designated as event LBFLFK, which has been genetically engineered (GE) to allow for the synthesis of long chain omega-3 polyunsaturated fatty acids, including eicosapentaenoic acid and docosahexaenoic acid, from oleic acid in canola seed. The GE canola has also been genetically engineered for resistance to an imidazolinone herbicide. We are making the draft PPRA and draft EA available for public review and comment.

DATES: We will consider all comments that we receive on or before May 6, 2019.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docket Detail;D=APHIS-2018-0014.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2018–0014, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2018-0014* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 7997039 before coming.

The petition is also available on the APHIS website at: *http://www.aphis.usda.gov/biotechnology/petitions_table_pending.shtml* under APHIS petition 17–321–01p.

FOR FURTHER INFORMATION CONTACT: Dr. Subray Hegde, Acting Program Director, Biotechnology Risk Analysis Programs, Biotechnology Regulatory Services, APHIS, 4700 River Road, Unit 147, Riverdale, MD 20737–1236; 301–831–3901; email: *Subray.Hegde@usda.gov.* To obtain copies of the petition, contact Ms. Cindy Eck at (301) 851–3892; email: *cynthia.a.eck@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION: Under the authority of the plant pest provisions of the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered (GE) organisms and products are considered ''regulated articles.''

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. APHIS received a petition (APHIS Petition Number 17–321–01p) from BASF Plant Science, LP, of Florham Park, NJ (BASF), seeking a determination of nonregulated status of canola (*Brassica napus* L.) designated as event LBFLFK, which has been genetically engineered to allow for the synthesis of long chain omega-3 polyunsaturated fatty acids (LC–PUFAs), including eicosapentaenoic acid (EPA) and docosahexaenoic acid (DHA), from oleic acid in canola seed. The canola has also been genetically engineered for resistance to an imidazolinone herbicide. The BASF petition states that information collected during field trials and laboratory analyses indicates that LBFLFK canola is not likely to be a plant pest and therefore should not be a regulated article under APHIS' regulations in 7 CFR part 340.

According to our process [1] for soliciting public comment when considering petitions for determinations of nonregulated status of GE organisms, APHIS accepts written comments regarding a petition once APHIS deems it complete. In a notice [2] published in the **Federal Register** on March 30, 2018 (83 FR 13722–13723, Docket No. APHIS–2018–0014), APHIS announced the availability of the BASF petition for public comment. APHIS solicited comments on the petition for 60 days ending on May 29, 2018, in order to help identify potential environmental and interrelated economic issues and impacts that APHIS may determine should be considered in our evaluation of the petition. APHIS received eight comments on the petition. Three of the comments were from individuals, three were from the canola industry, one was from a public interest group, and one was from a State government. APHIS has evaluated the issues raised during the comment period and, where appropriate, has provided a discussion of these issues in our draft environmental assessment (EA).

After public comments are received on a completed petition, APHIS evaluates those comments and then provides a second opportunity for public involvement in our decisionmaking process. According to our public review process (see footnote 1), the second opportunity for public involvement follows one of two approaches, as described below.

[1] On March 6, 2012, APHIS published in the **Federal Register** (77 FR 13258–13260, Docket No. APHIS–2011–0129) a notice describing our public review process for soliciting public comments and information when considering petitions for determinations of nonregulated status for GE organisms. To view the notice, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0129.*

[2] To view the notice, the petition, and the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2018-0014.*

If APHIS decides, based on its review of the petition and its evaluation and analysis of comments received during the 60-day public comment period on the petition, that the petition involves a GE organism that raises no substantive new issues, APHIS will follow Approach 1 for public involvement. Under Approach 1, APHIS announces in the **Federal Register** the availability of APHIS' preliminary regulatory determination along with its draft EA, preliminary finding of no significant impact (FONSI), and its draft plant pest risk assessment (PPRA) for a 30-day public review period. APHIS will evaluate any information received related to the petition and its supporting documents during the 30-day public review period.

If APHIS decides, based on its review of the petition and its evaluation and analysis of comments received during the 60-day public comment period on the petition, that the petition involves a GE organism that raises substantive new issues, APHIS will follow Approach 2. Under Approach 2, APHIS first solicits written comments from the public on a draft EA and draft PPRA for a 30-day comment period through the publication of a **Federal Register** notice. Then, after reviewing and evaluating the comments on the draft EA and draft PPRA and other information, APHIS will revise the PPRA as necessary and prepare a final EA and, based on the final EA, a National Environmental Policy Act (NEPA) decision document (either a FONSI or a notice of intent to prepare an environmental impact statement). For this petition, we are using Approach 2.

As part of our decisionmaking process regarding a GE organism's regulatory status, APHIS prepares a PPRA to assess the plant pest risk of the article. APHIS also prepares the appropriate environmental documentation—either an EA or an environmental impact statement—in accordance with NEPA, to provide the Agency and the public with a review and analysis of any potential environmental impacts that may result if the petition request is approved.

APHIS has prepared a draft PPRA and has concluded that BASF canola designated as event LBFLFK, which has been genetically engineered to allow for the synthesis of long chain omega-3 polyunsaturated fatty acids, including EPA and DHA, from oleic acid in canola seed, and for resistance to an imidazolinone herbicide, is unlikely to pose a plant pest risk. In section 403 of the Plant Protection Act, ''plant pest'' is defined as any living stage of any of the following that can directly or indirectly injure, cause damage to, or cause disease in any plant or plant product: A protozoan, a nonhuman animal, a parasitic plant, a bacterium, a fungus, a virus or viroid, an infectious agent or other pathogen, or any article similar to or allied with any of the foregoing.

APHIS has also prepared a draft EA in which we present two alternatives based on our analysis of data submitted by BASF, a review of other scientific data, field tests conducted under APHIS oversight, and comments received on the petition. APHIS is considering the following alternatives: (1) Take no action, *i.e.,* APHIS would not change the regulatory status of canola designated as event LBFLFK, or (2) make a determination of nonregulated status of canola designated as event LBFLFK.

The draft EA was prepared in accordance with (1) NEPA, as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) U.S. Department of Agriculture regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

In accordance with our process for soliciting public input when considering petitions for determinations of nonregulated status for GE organisms, we are publishing this notice to inform the public that APHIS will accept written comments on our draft EA and our draft PPRA regarding the petition for a determination of nonregulated status from interested or affected persons for a period of 30 days from the date of this notice. Copies of the draft EA and the draft PPRA, as well as the previously published petition, are available as indicated under **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** above.

After the 30-day comment period closes, APHIS will review and evaluate any information received during the comment period and any other relevant information. After reviewing and evaluating the comments on the draft EA and the draft PPRA and other information, APHIS will revise the PPRA as necessary and prepare a final EA. Based on the final EA, APHIS will prepare a NEPA decision document (either a FONSI or a notice of intent to prepare an environmental impact statement). If a FONSI is reached, APHIS will furnish a response to the petitioner, either approving or denying the petition. APHIS will also publish a notice in the **Federal Register** announcing the regulatory status of the GE organism and the availability of APHIS' final EA, PPRA, FONSI, and our regulatory determination.

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 1st day of April 2019.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2019–06630 Filed 4–3–19; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF COMMERCE

International Trade Administration

[Docket No.: 190319246–9246–01]

Call for Applications for the International Buyer Program Quarter 4 Calendar Year 2019

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice and call for applications.

SUMMARY: In this notice, the U.S. Department of Commerce (DOC) International Trade Administration (ITA) announces that it will accept applications for the International Buyer Program (IBP) for quarter 4 of calendar year 2019 (October 1, 2019, through December 31, 2019). This announcement also sets out the objectives, procedures and application review criteria for the IBP. The purpose of the IBP is to bring international buyers together with U.S. firms in industries with high export potential at leading U.S. trade shows. Specifically, through the IBP, the ITA selects domestic trade shows which will receive ITA services in the form of global promotion in foreign markets, recruitment of foreign buyers, and provision of export counseling to exhibitors at the trade show. This notice covers selection for IBP participation during quarter 4 of calendar year 2019.

As previously announced, ITA recently conducted a program review of the IBP and is developing a new ITA menu of services/activities for trade shows. The new menu of services will expand upon the User Fee Schedule for ITA's Global Markets bureau and will be available for trade show organizers that meet transparent eligibility requirements. The goal is to create greater access to ITA services, while also promoting consistency, efficiency, and flexibility. When finalized, ITA will announce the new menu of services in a **Federal Register** notice. Until such time, the IBP remains unchanged.

DATES: Applications for the IBP for quarter 4 of calendar year 2019 must be received by May 20, 2019.

ADDRESSES: The application form can be found at *www.export.gov/ibp.* Applications may be submitted by any of the following methods:

(1) *Mail/Hand (including express) Delivery Service:* International Buyer Program, Trade Promotion Programs, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Ave. NW, Mailstop 52024, Washington, DC 20230; or

(2) *Email: IBP2019@trade.gov.* Email applications will be accepted as interim applications, but must be followed by a signed original application that is received by the program no later than five (5) business days after the application deadline. To ensure that applications are received by the deadline, applicants are strongly urged to send applications by express delivery service (*e.g.,* U.S. Postal Service Express Delivery, Federal Express, UPS, etc.).

FOR FURTHER INFORMATION CONTACT: Vidya Desai, Senior Advisor for Trade Events, Trade Promotion Programs, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Ave. NW, Mailstop 52024, Washington, DC 20230; Telephone (202) 482–2311; Email: *IBP2019@trade.gov.*

SUPPLEMENTARY INFORMATION: The IBP was established in the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418, title II, § 2304, codified at 15 U.S.C. 4724) to bring international buyers together with U.S. firms by promoting leading U.S. trade shows in industries with high export potential. The IBP emphasizes cooperation between the DOC and trade show organizers to benefit U.S. firms exhibiting at selected shows and provides practical, hands-on assistance such as export counseling and market analysis to U.S. companies interested in exporting. Shows selected for the IBP will provide a venue for U.S. companies interested in expanding their sales into international markets.

Through the IBP, ITA selects U.S. trade shows, with participation by U.S. firms interested in exporting, that ITA determines to be leading international trade shows, for promotion in overseas markets by U.S. Embassies and Consulates. The DOC is authorized to provide successful applicants with services in the form of overseas promotion of the show; outreach to show participants about exporting; recruitment of potential buyers to attend the events; and staff assistance in setting up international trade centers at the shows. Worldwide promotion is executed through ITA offices at U.S. Embassies and Consulates in more than 75 countries representing the United States' major trading partners, and also in Embassies in countries where ITA does not maintain offices.

ITA is accepting applications from trade show organizers for the IBP for trade shows taking place between October 1, 2019, and December 31, 2019. Selection of a trade show is valid for one show, *i.e.,* a trade show organizer seeking selection for a recurring show must submit a new application for selection for each occurrence of the show. For shows that occur more than once in a calendar year, the trade show organizer must submit a separate application for each show.

For the IBP in quarter 4 of calendar year 2019, the ITA will select those shows that are determined to most clearly meet the statutory mandate in 15 U.S.C. 4721 to promote U.S. exports, especially those of small- and medium-sized enterprises, and the selection criteria articulated below.

There is no fee required to submit an application. If accepted into the program for quarter 4 of calendar year 2019, a participation fee of $9,800 is required for shows of five days or fewer. For trade shows more than five days in duration, or requiring more than one International Trade Center, a participation fee of $15,000 is required. For trade shows ten days or more in duration, and/or requiring more than two International Trade Centers, the participation fee will be determined by DOC and stated in the written notification of acceptance calculated on a full cost recovery basis. Successful applicants will be required to enter into a Memorandum of Agreement (MOA) with ITA within 10 days of written notification of acceptance into the program. The participation fee (by check or credit card) is due within 30 days of written notification of acceptance into the program.

The MOA constitutes an agreement between ITA and the show organizer specifying which responsibilities for international promotion and export assistance services at the trade shows are to be undertaken by ITA as part of the IBP and, in turn, which responsibilities are to be undertaken by the show organizer. Anyone requesting application information will be sent a sample copy of the MOA along with the application and a copy of this **Federal Register** Notice. Applicants are encouraged to review the MOA closely as IBP participants are required to comply with all terms, conditions, and obligations in the MOA. Trade show organizer obligations include, but are not limited to, providing waived or reduced admission fees for international attendees who are participating in the IBP, the construction of an International Trade Center at the trade show, production of an export interest directory, and provision of complimentary hotel accommodations for DOC staff as explained in the MOA. Some of the most important commitments for the trade show organizer are to: Include in the terms and conditions of its exhibitor contracts provisions for the protection of intellectual property rights (IPR); to have procedures in place at the trade show to address IPR infringement which, at a minimum, provide information to help U.S. exhibitors procure legal representation during the trade show; and to agree to assist the DOC to reach and educate U.S. exhibitors on the Strategy Targeting Organized Piracy (STOP!), IPR protection measures available during the show, and the means to protect IPR in overseas markets, as well as in the United States. ITA responsibilities include, but are not limited to, the worldwide promotion of the trade show and, where feasible, recruitment of international buyers to that show, provision of on-site export assistance to U.S. exhibitors at the show, and the reporting of results to the show organizer.

Selection as an IBP partner does not constitute a guarantee by DOC of the show's success. IBP selection is not an endorsement of the show except as to its international buyer activities. Non-selection of an applicant for the IBP should not be viewed as a determination that the show will not be successful in promoting U.S. exports.

Eligibility: All 2019 U.S. trade shows taking place between October 1, 2019, and December 31, 2019, are eligible to apply for IBP participation through the show organizer.

Exclusions: Trade shows that are either first-time or horizontal (non-industry specific) shows generally will not be considered.

General Evaluation Criteria: The ITA will evaluate shows for the International Buyer Program using the following criteria:

(a) *Export Potential:* The trade show promotes products and services from U.S. industries that have high export potential, as determined by DOC sources, including industry analysts' assessment of export potential, ITA best prospects lists and U.S. export statistics.

(b) *Level of International Interest:* The trade show meets the needs of a significant number of overseas markets and corresponds to marketing

opportunities as identified by ITA. Previous international attendance at the show may be used as an indicator of such interest.

(c) *Scope of the Show:* The show offers a broad spectrum of U.S. made products and services for the subject industry. Trade shows with a majority of U.S. firms as exhibitors will be given priority.

(d) *U.S. Content of Show Exhibitors:* Trade shows with exhibitors featuring a high percentage of products produced in the United States or products with a high degree of U.S. content will be preferred.

(e) *Stature of the Show:* The trade show is clearly recognized by the industry it covers as a leading show for the promotion of that industry's products and services both domestically and internationally, and as a showplace for the latest technology or services in that industry.

(f) *Level of Exhibitor Interest:* U.S. exhibitors have expressed interest in receiving international business visitors during the trade show. A significant number of U.S. exhibitors should be seeking to begin exporting or to expand their sales into additional export markets.

(g) *Level of Overseas Marketing:* There has been a demonstrated effort by the applicant to market this show and prior related shows. For this criterion, the applicant should describe in detail, among other information, the international marketing program to be conducted for the show, and explain how efforts should increase individual and group international attendance.

(h) *Logistics:* The trade show site, facilities, transportation services, and availability of accommodations at the site of the exhibition (*i.e.,* International Trade Center, interpreters) are capable of accommodating large numbers of attendees whose native language will not be English.

(i) *Level of Cooperation:* The applicant demonstrates a willingness to cooperate with the ITA to fulfill the program's goals and adhere to the target dates set out in the MOA and in the show timetables, both of which are available from the program office (see the **FOR FURTHER INFORMATION CONTACT** section above). Past experience in the IBP will be taken into account in evaluating the applications received.

(j) *Delegation Incentives:* The IBP Office will be evaluating the level and/or range of incentives offered to delegations and/or delegation leaders recruited by U.S. overseas Embassies and Consulates. Examples of incentives to international visitors and to organized delegations include: Special organized events, such as receptions, meetings with association executives, briefings, and site tours; and complimentary accommodations for delegation leaders (beyond those required in the MOA).

Review Process: ITA will evaluate all applications received based on the criteria set out in this notice. Vetting will focus primarily on the export potential, level of international interest, and stature of the show. In reviewing applications, ITA will also consider scheduling and sector balance in terms of the need to allocate resources to support selected shows.

Application Requirements: Show organizers submitting applications for quarter 4 of calendar year 2019 IBP are requested to submit: (1) A narrative statement addressing each question in the application, Form OMB 0625–0143 (found at *www.export.gov/ibp*); (2) a signed statement that ''The information submitted in this application is correct and the applicant will abide by the terms set forth in the Call for Applications for the 2019 International Buyer Program (October 1, 2019, through December 31, 2019);'' and (3) two copies of the application: One copy of the application printed on company letterhead, and one electronic copy of the application emailed to *IBP2019@trade.gov* in Microsoft Word® format, on or before the deadline noted above. There is no fee required to apply. Applications for the IBP must be received by May 20, 2019. ITA expects to issue the results of its review process in June 2019.

Legal Authority: The statutory program authority for the ITA to conduct the International Buyer Program is 15 U.S.C. 4724. The DOC has the legal authority to enter into MOAs with show organizers under the provisions of the Mutual Educational and Cultural Exchange Act of 1961 (MECEA), as amended (22 U.S.C. 2455(f) and 2458(c)). MECEA allows ITA to accept contributions of funds and services from firms for the purposes of furthering its mission.

The Office of Management and Budget (OMB) has approved the information collection requirements of the application to this program (Form OMB 0625–0143) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (OMB Control No. 0625–0143). Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

For further information please contact: Vidya Desai, Senior Advisor for Trade Events, Trade Promotion Programs (*IBP2019@trade.gov*).

Gemal Brangman,

Team Leader, Trade Promotion Programs.

[FR Doc. 2019–06538 Filed 4–3–19; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG879

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Site Characterization Surveys Off the Coast of New York

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

ACTION: Notice; incidental harassment authorization; request for comments on proposed Renewal.

SUMMARY: NMFS received a request from Equinor Wind US LLC (formerly Statoil Wind US LLC; Equinor) for the Renewal of their currently active incidental harassment authorization (IHA) to take marine mammals incidental to marine site characterization surveys off the coast of New York in the area of the Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS–A 0512) and coastal waters where cable route corridors will be established. These activities are identical to those covered in the current authorization. Pursuant to the Marine Mammal Protection Act (MMPA), prior to issuing the currently active IHA, NMFS requested comments on both the proposed IHA and the potential for renewing the initial authorization if certain requirements were satisfied. The Renewal requirements have been satisfied, and NMFS is now providing an additional 15-day comment period to allow for any additional comments on the proposed Renewal not previously provided during the initial 30-day comment period. Any comments received on the potential Renewal, along with relevant comments on the initial IHA, have been considered in the development of this proposed IHA Renewal, and a summary of agency responses to applicable comments is included in this notice. NMFS will

consider any additional public comments prior to making any final decision on the issuance of the requested Renewal, and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than April 19, 2019.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to *ITP.Carduner@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at *www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Jordan Carduner, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the original application, Renewal request, and supporting documents (including NMFS **Federal Register** notices of the original proposed and final authorizations, and the previous IHA), as well as a list of the references cited in this document, may be obtained online at *www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to here as ''mitigation measures''). Monitoring and reporting of such takings are also required. The meaning of key terms such as ''take,'' ''harassment,'' and ''negligible impact'' can be found in section 3 of the MMPA (16 U.S.C. 1362) and the agency's regulations at 50 CFR 216.103.

NMFS' regulations implementing the MMPA at 50 CFR 216.107(e) indicate that IHAs may be renewed for additional periods of time not to exceed one year for each reauthorization. In the notice of proposed IHA for the initial authorization, NMFS described the circumstances under which we would consider issuing a Renewal for this activity, and requested public comment on a potential Renewal under those circumstances. Specifically, on a case-by-case basis, NMFS may issue a one-year IHA Renewal when (1) another year of identical or nearly identical activities as described in the Specified Activities section is planned or (2) the activities would not be completed by the time the IHA expires and a second IHA would allow for completion of the activities beyond that described in the Dates and Duration section of the initial IHA. All of the follwing conditions must be met in order to issue a Renewal:

- A request for Renewal is received no later than 60 days prior to expiration of the current IHA.
- The request for Renewal must include the following:

(1) An explanation that the activities to be conducted beyond the initial dates either are identical to the previously analyzed activities or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, take estimates, or mitigation and monitoring requirements; and

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

- Upon review of the request for Renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures remain the same and appropriate, and the initial findings remain valid.

An additional public comment period of 15 days (for a total of 45 days), with direct notice by email, phone, or postal service to commenters on the initial IHA, is provided to allow for any additional comments on the proposed Renewal. A description of the Renewal process may be found on our website at: *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-harassment-authorization-renewals.*

The NDAA (Pub. L. 108–136) removed the ''small numbers'' and ''specified geographical region'' limitations indicated above and amended the definition of ''harassment'' as it applies to a ''military readiness activity.''

National Environmental Policy Act

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), as implemented by the regulations published by the Council on Environmental Quality (40 CFR parts 1500–1508), NMFS prepared an Environmental Assessment (EA) to consider the direct, indirect and cumulative effects to the human environment resulting from the issuance of the initial IHA in 2018. NMFS made the EA available to the public for review and comment. Also in compliance with NEPA and the CEQ regulations, NMFS signed a Finding of No Significant Impact (FONSI) on April 24, 2018. The 2018 NEPA documents are available at: *www.fisheries.noaa.gov/action/incidental-take-authorization-statoil-wind-site-characterization-surveys-offshore-new-york.* We have reviewed Equinor's application for a Renewal of the 2018 IHA and the 2018 monitoring report. Based on that review, we have determined that the proposed action follows closely the IHA issued and implemented in 2018 and does not present any substantial changes, or significant new circumstances or information relevant to environmental concerns which would require a supplement to the 2018 EA or

preparation of a new NEPA document. Therefore, we have preliminarily determined that a new or supplemental EA or Environmental Impact Statement is unnecessary, and will, after review of public comments determine whether or not to rely on the existing EA and FONSI.

History of Request

On April 24, 2018, NMFS issued an IHA to Statoil Wind US LLC, to take marine mammals incidental to marine site characterization surveys off the coast of New York in the area of the Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS–A 0512) and coastal waters where cable route corridors will be established, effective from April 24, 2018, through April 23, 2019 (83 FR 19532; May 3, 2018). On February 21, 2019, NMFS received an application for the Renewal of that IHA. As described in the application for Renewal, the activities authorized in the initial IHA would not be completed by the time that IHA expires and a second IHA would allow for completion of the activities beyond that described in the Dates and Duration section of the initial IHA. As required, the applicant also provided a preliminary monitoring report (available at *www.fisheries.noaa.gov/action/incidental-take-authorization-statoil-wind-site-characterization-surveys-offshore-new-york*) which confirms that the applicant has implemented the required mitigation and monitoring, and which also shows that no impacts of a scale or nature not previously analyzed or authorized have occurred as a result of the activities conducted. Since the initial IHA was issued, Statoil Wind US LLC has changed the name under which the company operates to Equinor Wind US LLC (Equinor).

Description of the Specified Activities and Anticipated Impacts

Equinor proposes to continue their marine site characterization surveys in the approximately 79,350-acre Lease Area located approximately 11.5 nautical miles (nm) from Jones Beach, New York and along cable route corridors between the Lease Area and New York. Water depths across the Lease Area range from approximately 22 to 41 meters (m) (72 to 135 feet (ft)) while the cable route corridors extend to shallow water areas near landfall locations. The specified activities described for this renewal are an identical subset of the activities covered by the initial 2018 IHA. The purpose of the surveys are to support the siting, design, and deployment of up to three meteorological data buoy deployment areas and to obtain a baseline assessment of seabed/sub-surface soil conditions in the Lease Area and cable route corridors to support the siting of a proposed offshore wind farm. NMFS previously published notices of proposed IHA (83 FR 7655; February 22, 2018) and issued IHA (83 FR 19532; May 3, 2018). These documents, as well as Equinor's initial IHA application and the preliminary monitoring report for the previously issued IHA, are available at: *www.fisheries.noaa.gov/action/incidental-take-authorization-statoil-wind-site-characterization-surveys-offshore-new-york.*

Similarly, the anticipated impacts are identical to those described in the initial IHA. Specifically, we anticipate the take of 11 marine mammal stocks (including nine cetacean and two pinniped stocks), by Level B harassment only, incidental to the site characterization surveys due to exposure to noise resulting from high resolution geophysical (HRG) survey equipment. Equinor was not able to complete the site characterization surveys analyzed in the initial IHA by the date that IHA is set to expire and anticipates the need for an additional 56 operational survey days to complete the survey campaign in 2019.

The following documents are referenced in this notice and include important supporting information, and may be found at the indicated location:

- Initial Proposed IHA: Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Site Characterization Surveys off of New York (83 FR 7655; February 22, 2018). Available at: *www.fisheries.noaa.gov/action/incidental-take-authorization-statoil-wind-site-characterization-surveys-offshore-new-york;*
- Initial Final IHA. Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Site Characterization Surveys off of New York (83 FR 19532; May 3, 2018). Available at: *www.fisheries.noaa.gov/action/incidental-take-authorization-statoil-wind-site-characterization-surveys-offshore-new-york;*
- Preliminary Monitoring Report from Initial IHA. Available at: *www.fisheries.noaa.gov/action/incidental-take-authorization-statoil-wind-site-characterization-surveys-offshore-new-york;* and
- Environmental Assessment (EA). Issuance of an Incidental Harassment Authorization to Statoil Wind U.S. LLC for Site Characterization Surveys off the Coast of New York. Available at: *www.fisheries.noaa.gov/action/incidental-take-authorization-statoil-wind-site-characterization-surveys-offshore-new-york.*

Detailed Description of the Activity

As described above, Equinor was not able to complete the surveys analyzed in the initial IHA by the date that IHA is set to expire (April 23, 2019). As such, the surveys Equinor proposes to conduct in 2019 would be a continuation of the surveys as described in the initial 2018 IHA and would be identical to the activities analyzed in the initial IHA (same location, equipment, methods, and seasonality). The initial IHA analyzed the potential impacts to marine mammals from a total of 142 survey days. Equinor completed a total of 86 operational survey days in 2018, and anticipates a total of 56 operational survey days will be required to complete the survey campaign in 2019 following issuance of the IHA Renewal, if renewed. Thus the total duration of the surveys conducted in 2018 and 2019 combined would not exceed the total duration described and analyzed in the previously issued IHA (142 days total). The proposed Renewal would be effective for a period of one year from the date of issuance.

Description of Marine Mammals

A description of the marine mammals in the area of the activities for which authorization of take is proposed here, including information on abundance, status, distribution, and hearing, may be found in the Notice of issued IHA (83 FR 19532; May 3, 2018) for the initial authorization. NMFS has reviewed the monitoring data from the initial IHA, recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature, and determined that neither this nor any other new information affects which species or stocks have the potential to be affected or the pertinent information in the Description of the Marine Mammals in the Area of Specified Activities contained in the supporting documents for the initial IHA.

Potential Effects on Marine Mammals and Their Habitat

A description of the potential effects of the specified activity on marine mammals and their habitat for the activities for which take is proposed here may be found in the Notice of issued IHA for the initial authorization. NMFS has reviewed the monitoring data from the initial IHA, recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature, and

determined that neither this nor any other new information affects our initial analysis of impacts on marine mammals and their habitat.

Estimated Take

A detailed description of the methods and inputs used to estimate take for the specified activity are found in the Notices of issued IHA for the initial authorization. The HRG equipment that may result in take, as well as the source levels, marine mammal stocks taken, marine mammal density data and the methods of take estimation applicable to this authorization remain unchanged from the previously issued IHA.

As described above, Equinor completed 86 survey days in 2018 and anticipates the need for an additional 56 survey days in 2019 to complete their survey. As the number of survey days remaining is less than the number of survey days analyzed in the previous IHA, the number of takes estimated to occur in 2019, and proposed for authorization, has changed from the number of takes authorized in the initial IHA (Table 7 in the initial IHA).

Equinor has already completed 60.5 percent of the planned total survey days that were analyzed in the initials IHA (*i.e.,* 86 of a total of 142 total survey days). Thus 39.5 percent of the total survey days analyzed in the previous IHA remain to be completed in 2019 (*i.e.,* 56 of a total of 142 total survey days). We therefore anticipate that the number of takes that may occur as a result of the remaining survey days in 2019 will represent 39.5 percent of the total take that was expected to occur during the entire duration of the survey (total 142 days) and was authorized in the initial IHA. The number of takes expected to occur during the remaining 56 survey days in 2019, and proposed for authorization, are shown in Table 1.

TABLE 1—NUMBER OF TAKES EXPECTED TO OCCUR AND PROPOSED FOR AUTHORIZATION DURING THE REMAINING 56 SURVEY DAYS IN 2019, AND PROPOSED FOR AUTHORIZATION

Species	Level B takes	Total takes
North Atlantic right whale	7	7
Humpback whale	9	9
Fin whale	38	38
Sperm whale	2	2
Minke whale	15	15
Bottlenose dolphin	615	615
Common dolphin	668	668
Atlantic white-sided dolphin	169	169
Harbor porpoise	892	892
Harbor seal	1144	1144
Gray seal	1144	1144

Description of Proposed Mitigation, Monitoring and Reporting Measures

The proposed mitigation, monitoring, and reporting measures included as requirements in this authorization are identical to those included in the Notice announcing the issuance of the initial IHA, and the discussion of the least practicable adverse impact included in that document remains accurate. The following measures are proposed for this renewal:

Marine Mammal Exclusion and Watch Zones

As required in the BOEM lease, marine mammal exclusion zones (EZ) will be established around the HRG survey equipment and monitored by protected species observers (PSO) during HRG surveys as follows:

- 50 m EZ for pinnipeds and delphinids (except harbor porpoises);
- 100 m EZ for large whales including sperm whales and mysticetes (except North Atlantic right whales) and harbor porpoises;
- 500 m EZ for North Atlantic right whales.

In addition, PSOs will visually monitor for all marine mammals to the extent of a 500 m ''Watch Zone'' or as far as possible if the extent of the Watch Zone is not fully visible.

Visual Monitoring

As per the BOEM lease, visual and acoustic monitoring of the established exclusion and monitoring zones will be performed by qualified and NMFS-approved PSOs. It will be the responsibility of the Lead PSO on duty to communicate the presence of marine mammals as well as to communicate and enforce the action(s) that are necessary to ensure mitigation and monitoring requirements are implemented as appropriate. PSOs will be equipped with binoculars and have the ability to estimate distances to marine mammals located in proximity to the vessel and/or exclusion zone using range finders. Reticulated binoculars will also be available to PSOs for use as appropriate based on conditions and visibility to support the siting and monitoring of marine species. Digital single-lens reflex camera equipment will be used to record sightings and verify species identification. During surveys conducted at night, night-vision equipment and infrared technology will be available for PSO use, and PAM (described below) will be used.

Pre-Clearance of the Exclusion Zone

For all HRG survey activities, Statoil will implement a 30-minute pre-clearance period of the relevant EZs prior to the initiation of HRG survey equipment. During this period the EZs will be monitored by PSOs, using the appropriate visual technology for a 30-minute period. HRG survey equipment will not be initiated if marine mammals are observed within or approaching the relevant EZs during this pre-clearance period. If a marine mammal is observed within or approaching the relevant EZ during the pre-clearance period, ramp-up will not begin until the animal(s) has been observed exiting the EZ or until an additional time period has elapsed with no further sighting of the animal (15 minutes for small delphinoid cetaceans and pinnipeds and 30 minutes for all other species). This pre-clearance requirement will include small delphinoids that approach the vessel (*e.g.,* bow ride). PSOs will also continue to monitor the zone for 30 minutes after survey equipment is shut down or survey activity has concluded.

Passive Acoustic Monitoring

As required in the BOEM lease, PAM will be required during HRG surveys conducted at night. In addition, PAM systems would be employed during daylight hours as needed to support system calibration and PSO and PAM team coordination, as well as in support of efforts to evaluate the effectiveness of the various mitigation techniques (*i.e.,* visual observations during day and night, compared to the PAM detections/operations). PAM operators will also be on call as necessary during daytime operations should visual observations become impaired. BOEM's lease stipulations require the use of PAM during nighttime operations. However, these requirements do not require that any mitigation action be taken upon acoustic detection of marine mammals. Given the range of species that could occur in the survey area, the PAM system will consist of an array of hydrophones with both broadband (sampling mid-range frequencies of 2 kHz to 200 kHz) and at least one low-frequency hydrophone (sampling range frequencies of 75 Hz to 30 kHz). The

PAM operator would monitor the hydrophone signals in real time both aurally (using headphones) and visually (via the monitor screen displays). The PAM operator would communicate detections to the Lead PSO on duty who will ensure the implementation of the appropriate mitigation procedures. A mitigation and monitoring communications flow diagram has been included as Appendix C of the IHA application.

Ramp-Up of Survey Equipment

As required in the BOEM lease, where technically feasible, a ramp-up procedure will be used for HRG survey equipment capable of adjusting energy levels at the start or re-start of HRG survey activities. The ramp-up procedure will be used at the beginning of HRG survey activities in order to provide additional protection to marine mammals near the survey area by allowing them to vacate the area prior to the commencement of survey equipment use at full energy. A ramp-up will begin with the power of the smallest acoustic equipment at its lowest practical power output appropriate for the survey. When technically feasible the power will then be gradually turned up and other acoustic sources added in a way such that the source level would increase gradually.

Shutdown Procedures

As required in the BOEM lease, if a marine mammal is observed within or approaching the relevant EZ (as described above) an immediate shutdown of the survey equipment is required. Subsequent restart of the survey equipment may only occur after the animal(s) has either been observed exiting the relevant EZ or until an additional time period has elapsed with no further sighting of the animal (*e.g.,*15 minutes for delphinoid cetaceans and pinnipeds and 30 minutes for all other species). HRG survey equipment may continue operating if small delphinids voluntarily approach the vessel (*e.g.,* to bow ride) when HRG survey equipment is operating.

As required in the BOEM lease, if the HRG equipment shuts down for reasons other than mitigation (*i.e.,* mechanical or electronic failure) resulting in the cessation of the survey equipment for a period greater than 20 minutes, a 30 minute pre-clearance period (as described above) will precede the restart of the HRG survey equipment. If the pause is less than 20 minutes, the equipment may be restarted as soon as practicable at its full operational level only if visual surveys were continued diligently throughout the silent period and the EZs remained clear of marine mammals during that entire period. If visual surveys were not continued diligently during the pause of 20 minutes or less, a 30-minute pre-clearance period (as described above) will precede the re-start of the HRG survey equipment. Following a shutdown, HRG survey equipment may be restarted following pre-clearance of the zones as described above.

Vessel Strike Avoidance

Statoil will ensure that vessel operators and crew maintain a vigilant watch for cetaceans and pinnipeds by slowing down or stopping the vessel to avoid striking marine mammals. Survey vessel crew members responsible for navigation duties will receive site-specific training on marine mammal sighting/reporting and vessel strike avoidance measures. Vessel strike avoidance measures will include, but are not limited to, the following, as required in the BOEM lease, except under circumstances when complying with these requirements would put the safety of the vessel or crew at risk:

- All vessel operators and crew will maintain vigilant watch for cetaceans and pinnipeds, and slow down or stop their vessel to avoid striking these protected species;
- All vessel operators will comply with 10 knot (18.5 kilometers (km)/hr) or less speed restrictions in any SMA per NOAA guidance. This applies to all vessels operating at any time of year;
- All vessel operators will reduce vessel speed to 10 knots (18.5 km/hr) or less when any large whale, any mother/calf pairs, pods, or large assemblages of non-delphinoid cetaceans are observed near (within 100 m (330 ft)) an underway vessel;
- All survey vessels will maintain a separation distance of 500 m (1640 ft) or greater from any sighted North Atlantic right whale;
- If underway, vessels must steer a course away from any sighted North Atlantic right whale at 10 knots (18.5 km/hr) or less until the 500 m (1640 ft) minimum separation distance has been established. If a North Atlantic right whale is sighted in a vessel's path, or within 100 m (330 ft) to an underway vessel, the underway vessel must reduce speed and shift the engine to neutral. Engines will not be engaged until the North Atlantic right whale has moved outside of the vessel's path and beyond 100 m. If stationary, the vessel must not engage engines until the North Atlantic right whale has moved beyond 100 m;
- All vessels will maintain a separation distance of 100 m (330 ft) or greater from any sighted non-delphinoid cetacean. If sighted, the vessel underway must reduce speed and shift the engine to neutral, and must not engage the engines until the non-delphinoid cetacean has moved outside of the vessel's path and beyond 100 m. If a survey vessel is stationary, the vessel will not engage engines until the non-delphinoid cetacean has moved out of the vessel's path and beyond 100 m;
- All vessels will maintain a separation distance of 50 m (164 ft) or greater from any sighted delphinoid cetacean. Any vessel underway will remain parallel to a sighted delphinoid cetacean's course whenever possible, and avoid excessive speed or abrupt changes in direction. Any vessel underway will reduce vessel speed to 10 knots (18.5 km/hr) or less when pods (including mother/calf pairs) or large assemblages of delphinoid cetaceans are observed. Vessels may not adjust course and speed until the delphinoid cetaceans have moved beyond 50 m and/or the abeam of the underway vessel;
- All vessels underway will not divert or alter course in order to approach any whale, delphinoid cetacean, or pinniped. Any vessel underway will avoid excessive speed or abrupt changes in direction to avoid injury to the sighted cetacean or pinniped; and
- All vessels will maintain a separation distance of 50 m (164 ft) or greater from any sighted pinniped.

Confirmation of the training and understanding of the requirements will be documented on a training course log sheet. Signing the log sheet will certify that the crew members understand and will comply with the necessary requirements throughout the survey event.

Seasonal Operating Requirements

Between watch shifts, members of the monitoring team will consult NMFS' North Atlantic right whale reporting systems for the presence of North Atlantic right whales throughout survey operations. However, the survey activities will occur outside of the SMA located off the coasts of New Jersey and New York. Members of the monitoring team will monitor the NMFS North Atlantic right whale reporting systems for the establishment of a Dynamic Management Area (DMA). If NMFS should establish a DMA in the survey area, within 24 hours of the establishment of the DMA Statoil will work with NMFS to shut down and/or alter the survey activities to avoid the DMA.

The mitigation measures are designed to avoid the already low potential for injury in addition to some Level B harassment, and to minimize the potential for vessel strikes. There are no known marine mammal feeding areas, rookeries, or mating grounds in the survey area that would otherwise potentially warrant increased mitigation measures for marine mammals or their habitat (or both). The survey will occur in an area that has been identified as a biologically important area for migration for North Atlantic right whales. However, given the small spatial extent of the survey area relative to the substantially larger spatial extent of the right whale migratory area, the survey is not expected to appreciably reduce migratory habitat nor to negatively impact the migration of North Atlantic right whales, thus mitigation to address the survey's occurrence in North Atlantic right whale migratory habitat is not warranted. Further, we believe the mitigation measures are practicable for the applicant to implement.

Based on our evaluation of the applicant's proposed measures, NMFS has determined that the mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Public Comments

As noted previously, NMFS published a notice of proposed IHA (83 FR 7655; February 22, 2018) and solicited public comments on both our proposal to issue the initial IHA and on the potential for a Renewal, should certain requirements be met. All public comments were addressed in the notice announcing the issuance of the initial IHA. Below, we describe how we have addressed, with updated information where appropriate, any comments received that specifically pertain to the Renewal of the 2018 IHA.

Comment: The Marine Mammal Commission (Commission) requested clarification of certain issues associated with NMFS's notice that one-year Renewals can be issued in certain limited circumstances and expressed concern that the process would bypass the public notice and comment requirements. The Commission also suggested that NMFS should discuss the possibility of Renewals through a more general route, such as a rulemaking, instead of notice in a specific authorization. The Commission further recommended that if NMFS did not pursue a more general route, that the agency provide the Commission and the public with a legal analysis supporting our conclusion that this process is consistent with the requirements of section 101(a)(5)(D) of the MMPA.

Response: The notice of the proposed initial IHA expressly notified and invited comment from the public on the possibility that under certain, limited conditions the applicant could seek a Renewal IHA for an additional year. The notice described the conditions under which such a Renewal request could be considered and expressly sought public comment in the event such a Renewal were sought. Further, since issuance of the initial IHA NMFS has modified the Renewal process to provide notice through the **Federal Register** and an additional 15-day public comment period at the time the Renewal IHA is requested. NMFS also will provide direct notice of the proposed Renewal to those who commented on the initial IHA, to provide an opportunity to submit any additional comments.

We appreciate the Commission's suggestion that NMFS discuss the potential for IHA Renewals through a more general route, such as a rulemaking. However, utilizing the public comment process associated with IHAs is more efficient for the agency, while still providing for appropriate public input into NMFS' decision-making. Further, NMFS' recent modification to the Renewal process (*i.e.,* soliciting additional public comment at the time of a Renewal request) should alleviate the Commission's concern about the lack of additional public comment and need for a more general rulemaking.

For more information, NMFS has published a description of the Renewal process on our website at: *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-harassment-authorization-renewals.*

Preliminary Determinations

Equinor's proposed activity is identical to the activity analyzed in our previously issued notices of proposed IHA (83 FR 7655; February 22, 2018) and issued IHA (83 FR 19532; May 3, 2018) (with the exception of the duration of the survey, which is less than the duration analyzed in those documents). We concluded that the initial IHA would have a negligible impact on all marine mammal stocks and species and that the taking would be small relative to population sizes. The marine mammal information, potential effects, and the mitigation and monitoring measures remain the same as those analyzed in the previously issued notices of proposed IHA and issued IHA, therefore the extensive analysis, as well as the associated findings, included in the prior documents remain applicable.

The only differences between the initial IHA and this proposed Renewal is that the duration of the survey and the numbers of incidental marine mammal take expected to occur are lower than the numbers analyzed and authorized in the previously issued IHA. As both the duration of the survey and the number of takes expected to occur, and proposed to be authorized, are lower than in the initial IHA, we have concluded that the effects of the proposed Renewal would be the same or less than those that were analyzed in the notices of the initial proposed IHA and issued IHA.

NMFS has preliminarily concluded that there is no new information suggesting that our analysis or findings should change from those reached for the initial IHA. Based on the information and analysis contained here and in the referenced documents, NMFS has determined the following: (1) The required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; (4) Equinor's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action, and; (5) appropriate monitoring and reporting requirements are included.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally, in this case with the NMFS Greater Atlantic Regional Fisheries Office (GARFO), whenever we propose to authorize take for endangered or threatened species.

The NMFS Office of Protected Resources is proposing to authorize the incidental take of three species of marine mammals which are listed under the ESA: The North Atlantic right, fin, and sperm whale. BOEM consulted with NMFS GARFO under section 7 of the ESA on commercial wind lease issuance and site assessment activities on the

Atlantic Outer Continental Shelf in Massachusetts, Rhode Island, New York and New Jersey Wind Energy Areas. NMFS GARFO issued a programmatic Biological Opinion in 2013 concluding that these activities may adversely affect but are not likely to jeopardize the continued existence of the North Atlantic right, fin, and sperm whale. The Biological Opinion was later amended to include the Office of Protected Resources as an action agency. The Biological Opinion can be found online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable.* The programmatic consultation established a procedure for reviewing future actions to determine if they and their effects fell within the scope of the Biological Opinion, and noted that for future MMPA authorizations for such activities, the Biological Opinion's incidental take statement (ITS) could be amended to exempt the take of ESA listed marine mammals. In April 2018, NMFS GARFO amended the ITS to exempt the take of right, sperm and fin whales as a result of the site characterization surveys authorized via the previously issued IHA.

NMFS GARFO has determined that the 2013 Biological Opinion remains valid and that the proposed MMPA authorization provides no new information about the effects of the action, nor does it change the extent of effects of the action, or any other basis to require reinitiation of the opinion. The Biological Opinion meets the requirements of section 7(a)(2) of the ESA and implementing regulations at 50 CFR 402 for our proposed issuance of an IHA under the MMPA, and no further consultation is required. NMFS GARFO will issue an amended ITS and append it to the 2013 Biological Opinion.

Proposed Renewal and Request for Public Comment

As a result of these preliminary determinations, NMFS proposes to issue an IHA Renewal to Equinor for conducting marine site characterization surveys off the coast of New York and coastal waters where cable route corridors will be established, provided the previously described mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* We request comment on our analyses, the proposed Renewal, and any other aspect of this Notice. Please include with your comments any supporting data or literature citations to help inform our final decision on the request for MMPA authorization.

Dated: April 1, 2019.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2019–06598 Filed 4–3–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG931

Fisheries of the Exclusive Economic Zone Off Alaska; Halibut Deck Sorting Monitoring Requirements for Trawl Catcher/Processors Operating in Non-Pollock Groundfish Fisheries off Alaska; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: NMFS representatives will meet with public stakeholders to provide an overview of, and receive public comment on, proposed regulations to implement new catch handling and monitoring requirements to allow Pacific halibut bycatch to be sorted on the deck of trawl catcher/processors and motherships participating in the non-pollock groundfish fisheries off Alaska. The proposed rule is expected to publish in the **Federal Register** during the first week of April 2019.

DATES: The meeting will be held on April 18, 2019, from 1 p.m. to 3 p.m., Pacific Standard Time.

ADDRESSES: The meeting will be held at The Mountaineers, Cascade A room, located at 7700 Sand Point Way NE, Seattle, WA 98115.

FOR FURTHER INFORMATION CONTACT: Joseph Krieger, 907–586–7650.

SUPPLEMENTARY INFORMATION: The proposed regulations to allow halibut deck sorting would reduce halibut mortality by allowing halibut to be discarded and returned to the sea faster than current monitoring requirements allow. Reducing halibut discard mortality could maximize prosecution of the directed groundfish fisheries that otherwise might be constrained by restrictive halibut prohibited species catch limits, and may benefit vessels participating in the directed halibut fishery by returning more live halibut to the water that would then become available for harvest. Participation in halibut deck sorting and monitoring activities would be voluntary to allow industry flexibility to assess economic conditions and conduct halibut deck sorting when the benefits of reduced mortality provide valuable fishing opportunities that outweigh the operational cost of halibut deck sorting.

NMFS will hold an in-person meeting in Seattle, Washington, on April 18, 2019. Meeting topics include a description of the proposed regulations and an opportunity for the public to provide comments and ask questions.

Special Accommodations

This workshop will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joseph Krieger, 907–586–7650, at least 5 working days prior to the meeting date.

Dated: April 1, 2019.

Jennifer M. Wallace,

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

[FR Doc. 2019–06594 Filed 4–3–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG851

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Portsmouth Naval Shipyard Dry Dock 1 Modification and Expansion

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

ACTION: Notice; proposed incidental harassment authorization; request for comments on proposed authorization and possible renewal.

SUMMARY: NMFS has received a request from the U.S. Navy (Navy) for authorization to take marine mammals incidental to Portsmouth Naval Shipyard Dry Dock 1 modification and expansion in Kittery, Maine. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-year renewal that could be issued under certain circumstances and if all requirements are met, as described in

Request for Public Comments at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorizations and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than May 6, 2019.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to *ITP.guan@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Shane Guan, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

The NDAA (Pub. L. 108–136) removed the ''small numbers'' and ''specified geographical region'' limitations indicated above and amended the definition of ''harassment'' as it applies to a ''military readiness activity.'' The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an incidental harassment authorization) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (incidental harassment authorizations with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA request.

Summary of Request

On November 1, 2018, NMFS received a request from the Navy for an IHA to take marine mammals incidental to modification and expansion of dry dock 1 at Portsmouth Naval Shipyard in Kittery, Maine. The application was deemed adequate and complete on March 11, 2019. The Navy's request is for take of harbor porpoises, harbor seals, gray seals, harp seals, and hooded seals by Level B harassment and Level A harassment. Neither the Navy nor NMFS expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

NMFS previously issued two IHAs to the Navy for waterfront improvement work in 2017 (81 FR 85525; November 28, 2016) and 2018 (83 FR 3318; January 24, 2018). The Navy complied with all the requirements (*e.g.,* mitigation, monitoring, and reporting) of the previous IHAs and information regarding their monitoring results may be found in the Estimated Take section.

This proposed IHA would cover one year of a larger project for which the Navy intends to request take authorization for subsequent facets of the project. The larger 5-year project after the expiration of this IHA (if issued) involves further dock modification and expansion at the Portsmouth Naval Shipyard.

Description of Proposed Activity

Overview

The purpose of the proposed action is to modernize and maximize dry dock capabilities for performing current and future missions efficiently and with maximum flexibility. The need for the proposed action is to modify and expand Dry Dock 1 at the Portsmouth Naval Shipyard by constructing two new dry docking positions capable of servicing Virginia class submarines within the super flood basin of the dry dock.

The in-water portion of the dock modification and expansion work includes:

- Construction of the temporary structure for south closure wall;
- Construction of the super flood basin of the dry dock; and
- Extension of portal crane rail and utilities.

Construction activities that could affect marine mammals are limited to in-water pile driving and removal activities.

Dates and Duration

Construction activities are expected to begin in July 2019. In-water construction activities are expected to begin in October 2019, with an estimated total of 212 days for pile driving and pile removal. All in-water construction work will be limited to daylight hours.

Specific Geographic Region

The Shipyard is located in the Piscataqua River in Kittery, Maine. The Piscataqua River originates at the boundary of Dover, New Hampshire, and Elliot, Maine. The river flows in a southeasterly direction for 13 miles before entering Portsmouth Harbor and emptying into the Atlantic Ocean. The lower Piscataqua River is part of the Great Bay Estuary system and varies in width and depth. Many large and small islands break up the straight-line flow of the river as it continues toward the Atlantic Ocean. Seavey Island, the location of the proposed action, is located in the lower Piscataqua River approximately 547 yards from its southwest bank, 219 yards from its north bank, and approximately 2.5 miles upstream from the mouth of the river.

A map of the Portsmouth Naval Shipyard dock expansion action area is provided in Figure 1 below, and is also available in Figures 2 to 4 in the IHA application.

Water depths in the proposed project area range from 21 feet to 39 feet at Berths 11, 12, and 13. Water depths in the lower Piscataqua River near the proposed project area range from 15 feet in the shallowest areas to 69 feet in the deepest areas. The river is approximately 3,300 feet wide near the proposed project area, measured from the Kittery shoreline north of Wattlebury Island to the Portsmouth shoreline west of Peirce Island. The furthest direct line of sight from the proposed project area would be 0.8 mile to the southeast and 0.26 mile to the northwest.

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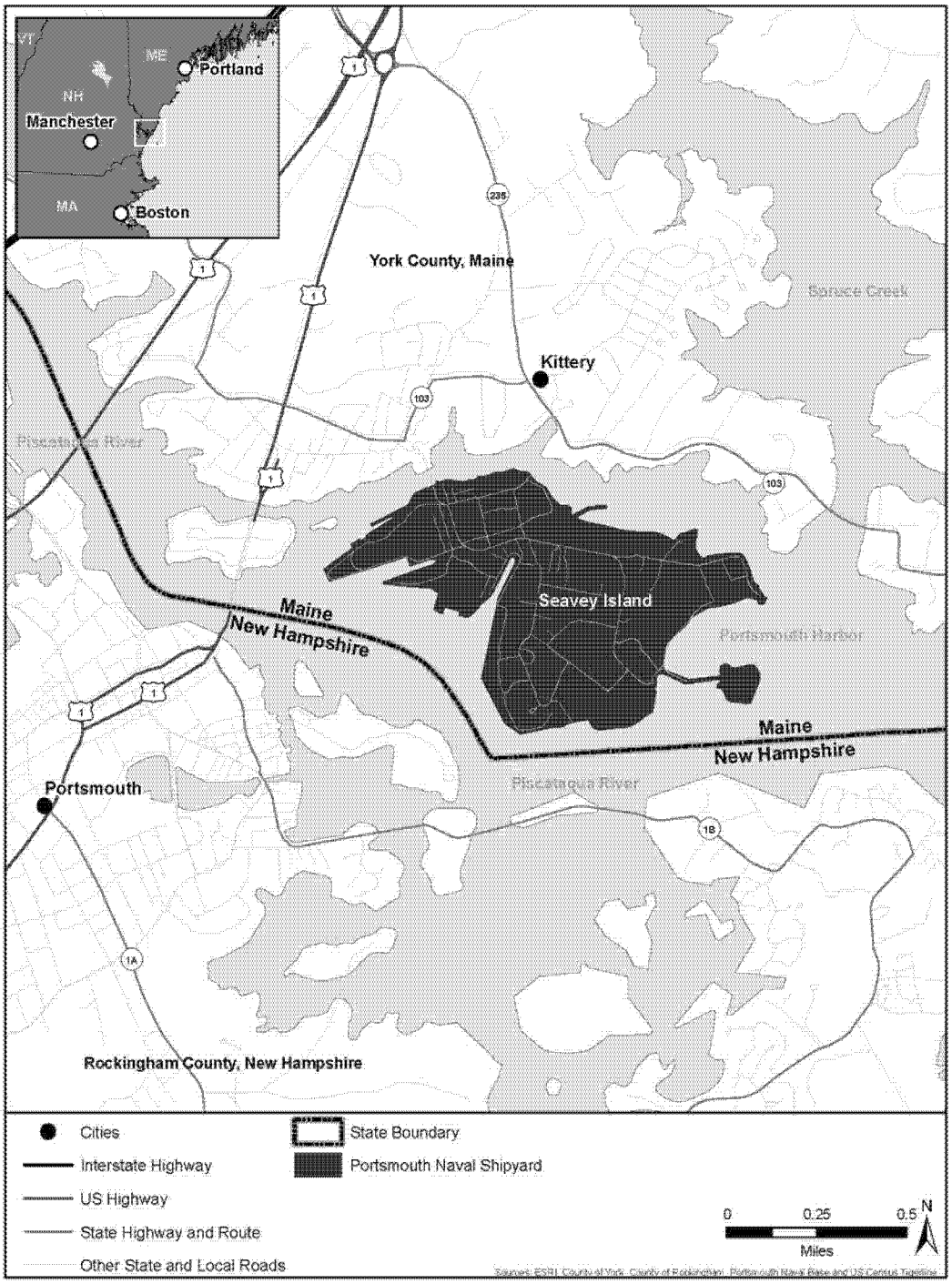

Figure 1. Site Location Map for Portsmouth Naval Ship Yard

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Detailed Description of Specific Activity

Under the proposed action, the expansion and modification would occur as multiple construction projects. Prior to the start of construction, the entrance to Dry Dock 1 would be dredged to previously permitted maintenance dredge limits. This dredging effort is required to support the projects and additional project-related dredging would occur intermittently throughout the proposed action. Since dredging and disposal activities would be slow-moving and generate low noise levels, NMFS and the Navy do not consider its effects as likely to rise the level of take of marine mammals. Therefore, these activities are not further discussed in this document.

The proposed 2019 through 2020 activities include pile driving (vibratory and impact) and rock drilling associated with construction of the super flood basin and Berth 2 improvements of the dry dock. The action would take place in and adjacent to Dry Dock 1 in the Controlled Industrial Area (CIA) that occupies the western extent of the Portsmouth Naval Shipyard.

To begin the project, a super flood basin would be created in front of the entrance of Dry Dock 1 by constructing closure walls that span from Berth 1 to Berth 11B. The super flood basin would operate like a navigation lock-type structure: Artificially raising the elevation of the water within the basin and dry dock above the tidally controlled river in order to lift the submarines to an elevation where they can be safely transferred into the dry dock without the use of buoyancy assist tanks. The super flood basin would be located between Berths 1 and 11 and extend approximately 580 feet from the existing outer seat of the dry dock (approximately 175 feet beyond the waterside end of Berth 1). The super flood basin would consist of three primary components: South closure wall, entrance structure, and west closure wall. The closure wall would be approximately 320 feet long and have an opening for a caisson gate. The Dry Dock 3 caisson would be repurposed for use in the new closure wall. A weir structure or discharge pipe would be built into the closure wall or incorporated into the modified caisson to control over-topping and ensure the super flood elevation, which is the minimum water elevation required to provide sufficient depths and clearance to safely support transit of Los Angeles class submarines into Dry Dock 1, through the entire super flood evolution. The gross area of the super flood basin would be approximately 152,000 sf (3.5 acres).

Concrete components for the closure walls, caisson seat, and sill would be cast in place or be pre-cast off-site then floated or hauled into place, as appropriate. The closure walls would be equipped with winches and mooring hardware on either side of the basin entrance to assist with vessel docking, and to support berthing of the caisson gate while not in place. Electrical utilities would be provided to support lighting along the closure wall and meet the electrical requirements of the caisson gate. Mooring hardware and electrical utilities would also support the berthing of ships force barges at the south closure wall. Ships force barges are where a group of sailors live and work during the overhaul. The south closure wall would consist of two, 70-foot diameter sheet pile cells that would be connected together and to the point of Berths 1 and 2 by interconnecting arcs. The sheeting for the two cells would be driven to bedrock to make up the shell of the structure south of the caisson and seat. By installing the sheets to bedrock, the cells would provide a barrier to exfiltration. Each of the cells would be filled with mass concrete and topped with a reinforced concrete cap that would act as the deck to the structure. To provide corrosion protection from the marine environment, a concrete facing would extend down the exterior of the sheets to below mudline. A sacrificial (*i.e.,* does not provide structural support) sheet pile wall would be installed outboard of the structural sheets and would remain for the life of the structure.

Before the closure walls are constructed, modifications to Berth 1 and Berth 11 are required. Improvements along Berth 1 would include driving steel sheet piles to create a bulkhead outboard of the existing quay wall, and placing concrete within the void between the sheet piles and the existing quay wall. This sheet pile bulkhead would provide a more impervious façade than the existing granite block quay wall to reduce water exfiltration from within the basin. The sheet pile bulkhead would be equipped with a concrete curb that would increase the height of Berth 1 by approximately 1 ft to an elevation of 15.6 ft above MLLW. To accommodate the super flood elevation improvements along Berth 11, bedrock grouting below the bulkhead from the west closure wall to the northwest corner of the basin would be installed to mitigate exfiltration along the berth. The stormwater drainage system at Berth 1 would be rerouted to a new outfall at the east end of Berth 2. The existing storm drain outfalls at Berth 11 within the limits of the basin have valves to prevent backflow of seawater into the storm drain collection system during super flood operations. The storm drain outlet piping would be modified to ensure landside drainage during super flood is accommodated.

Construction of the basin closure wall would bisect the existing Berth 11B resulting in loss of a fitting-out pier. As such, Berth 2 would replace Berth 11B for submarine outfitting. To accommodate this function, the existing fender system on Berth 2 would be relocated and expanded to accommodate fitting-out activities on the berth. Approximately 4,000 sf (surface area) of additional fender panel would be required, including 3,550 sf (surface area) below MLLW. The new fender panels would be approximately 6 inches (0.5 ft) thick and their installation below MLLW would result in a total fill volume of approximately 65 cy. No in-water pile driving would be required at Berth 2 to support pier outfitting.

Construction phasing would be required to minimize impacts on critical dry dock operations. Five notional construction phases were identified of which the first three would occur during the 2019 to 2020 period. This phasing schedule could change due to fleet mission requirements and boat schedules. The first phase of construction would occur when a boat is present and would be limited to site reconnaissance, field measurements, contractor submittals and general mobilization activities. Phase 2 would include construction of the southern closure wall and caisson seat foundation; Berth 1 and Berth 11 (A and B) improvements; Dry Dock 1 utility improvements; and dredging. Upland construction activities would include work on the Dry Dock 1 gallery improvements and commencement of the portal crane rail extension. Phase 3 would include construction of the west closure wall, caisson seat float-in, and additional Dry Dock 1 utility gallery improvements. Only the caisson seat float-in portion of Phase 3 would occur during year 1. Six temporary dolphins, comprised of eight, 14-inch H-Piles, would be installed to assist with float-in and placement of the caisson seat.

Overall, the construction work is estimated to take approximately 12 months to complete, of which pile driving/extraction/drilling would take 212 days.

A summary of in-water pile driving activity is provided in Table 1.

TABLE 1—SUMMARY OF IN-WATER PILE DRIVING ACTIVITIES

Pile purpose	Pile type	Pile size (inch)	Pile drive method	Total piles	Piles/day	Work days
Temporary structure	Steel H	14	Vibratory	32	2	16
			Impact		2	
Sheet pile wall along Berth 1	Steel sheet	24	Vibratory	320	12	27
			Impact		12	

TABLE 1—SUMMARY OF IN-WATER PILE DRIVING ACTIVITIES—Continued

Pile purpose	Pile type	Pile size (inch)	Pile drive method	Total piles	Piles/day	Work days
South Closure wall construction	Steel sheet	18	Vibratory	310	12	31
			Impact		12	
	Steel H pile removal	14	Vibratory	32	8	4
	Steel sheet	24	Vibratory	52	12	5
			Impact		12	
	Steel H	14	Vibratory	17	1	17
			Impact		1	
	Steel sheet	24	Vibratory	280	12	24
			Impact		12	
	Steel pipe casing	96	Down hole	10	0.5	32
Caisson seat float-in	Steel pipe	36	Vibratory	48	1	48
			Impact	48	1	
Elevated deck support	Steel pipe	16	Vibratory	8	1	8
			Impact	8		
Total				1,558		212

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see *Proposed Mitigation* and *Proposed Monitoring and Reporting*).

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS's Stock Assessment Reports (SARs; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS's website (*https://www.fisheries.noaa.gov/find*-species).

Table 2 lists all species with expected potential for occurrence in the Piscataqua River in Kittery, Maine, and summarizes information related to the population or stock, including regulatory status under the MMPA and ESA and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2018). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS's SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS's stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS's U.S. Atlantic Marine Mammal SARs. All values presented in Table 2 are the most recent available at the time of publication and are available in the 2017 SARs (Hayes *et al.,* 2018) and draft 2018 SARs (available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports*).

TABLE 2—MARINE MAMMALS WITH POTENTIAL PRESENCE WITHIN THE PROPOSED PROJECT AREA

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Cetartiodactyla—Cetacea—Superfamily Odontoceti (toothed whales)						
Family Phocoenidae (porpoises):						
Harbor porpoise	*Phocoena phocoena*	Gulf of Maine/Bay of Fundy	-; N	79,833 (0.32, 61,415)	706	255
Order Carnivora—Superfamily Pinnipedia						
Family Phocidae (earless seals):						
Harbor seal	*Phoca vitulina*	Western North Atlantic	-; N	75,834 (0.15, 66,884)	2,006	345
Gray seal	*Halichoerus grypus*	Western North Atlantic	-; N	27,131 (0.19, 23,158)	5,688	1,389
Harp seal	*Pagophilus groenlandicus*	Western North Atlantic	-; N	[4] 7,411,000 (NA, NA)	NA	225,687

TABLE 2—MARINE MAMMALS WITH POTENTIAL PRESENCE WITHIN THE PROPOSED PROJECT AREA—Continued

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Hooded seal	*Cystophora cristata*	Western North Atlantic	-; N	[5] 593,500 (NA, NA)	NA	1,680

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region#reports.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance.

[3] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

[4] Based on the latest estimates made in 2012 in Bay of Fundy (Hayes *et al.* 2018).

[5] Based on the latest estimates made in 2005 (Hammill and Stenson 2006).

All species that could potentially occur in the proposed action area are included in Table 2. More detailed descriptions of marine mammals in the Portsmouth Naval Shipyard project area is provided below.

Harbor Porpoise

Harbor porpoises are found commonly in coastal and offshore waters of both the Atlantic and Pacific Oceans. In the western North Atlantic, the species is found in both U.S. and Canadian waters. More specifically, the species can be found between West Greenland and Cape Hatteras, North Carolina. Of those 10 stocks that occur in U.S. waters, only one, the Gulf of Maine/Bay of Fundy stock, is found along the U.S. East Coast, and thus only individuals from this stock could be found in the proposed project area. The species is primarily found over the continental shelf in waters less than approximately 500 feet deep (Hayes *et al.* 2017). In general, the species is commonly found in bays, estuaries, and harbors.

Marine mammal monitoring was conducted during the Berth 11 Waterfront Improvements project from April 2017 through December 2017 (Cianbro 2018a) and through June 2018 (Cianbro 2018b). Harbor porpoise were observed traveling quickly through the river channel and past the proposed project area. A total of 5 harbor porpoises were sighted between April 2017 and June 2018.

Harbor Seal

Harbor seals can be found in nearshore waters along both the North Atlantic and North Pacific coasts, generally at latitudes above 30° North (Burns 2009). In the western Atlantic Ocean, the harbor seal's range extends from the eastern Canadian Arctic to New York; however, they can be found as far south as the Carolinas (Waring *et al.* 2015). In New England, the species can be found in coastal waters year-round (Waring *et al.* 2015).

Harbor seals are the most abundant pinniped in the Piscataqua River. They were commonly observed within the proposed project area between the months of April 2017 and June 2018 during the Berth 11 Waterfront Improvements project (Cianbro 2018a, 2018b). The primary behaviors observed during monitoring were milling (diving) that occurred almost 60 percent of the time followed by swimming and traveling by the proposed project area at 29 percent and 12 percent, respectively (Cianbro 2018a). Marine mammal surveys were conducted for one day of each month in 2017 (NAVFAC Mid-Atlantic 2018). Harbor seals were observed throughout the year and did not show any seasonality in their presence. A high frequency of seals were documented near the proposed project area and frequent the river in general as the majority of harbor seals occur along the main coast with a large portion of them hauling out at the Isles of Shoals. Pupping season for harbor seals is May to June. No harbor seal pups were observed during the surveys, and known pupping sites are north of the Maine-New Hampshire border (Waring *et al.* 2016).

Gray Seal

Gray seals are a coastal species that generally remains within the continental shelf region. However, they do venture into deeper water, as they have been known to dive up to 1,560 feet to capture prey during feeding.

Gray seals within U.S. waters are considered the western North Atlantic stock and are expected to be part of the eastern Canadian population. In U.S. waters, year-round breeding of approximately 400 animals has been documented on areas of outer Cape Cod and Muskeget Island in Massachusetts. In general, this species can be found year-round in the coastal waters of the Gulf of Maine (Hayes *et al.* 2017).

Gray seals were observed within the proposed project area between the months of April and December 2017 (Cianbro 2018a) and twice during the months of January through June 2018 (Cianbro 2018b). The primary behavior observed during surveys was milling at just over 60 percent of the time followed by swimming within and traveling through the proposed project area. Only approximately 5 percent of the time were gray seals observed foraging (Cianbro 2018a). Monthly marine mammal surveys also took place during 2017 and recorded six sightings of gray seal (NAVFAC Mid-Atlantic 2018). Pupping season for gray seals is December through February. No gray seal pups were observed during the surveys, and known pupping sites for gray seals (like harbor seals) are north of the Maine-New Hampshire border (Waring *et al.* 2016).

Hooded Seal

Hooded seals are generally found in deeper waters or on drifting pack ice. The hooded seal is a highly migratory species, and its range can extend from the Canadian Arctic to Puerto Rico. In U.S. waters, the species has an increasing presence in the coastal waters between Maine and Florida (Waring *et al.* 2007). In the United States, they are considered members of the western North Atlantic stock and generally occur in New England waters from January through May and further south in the summer and fall seasons (Waring *et al.* 2007).

Hooded seals have been observed in the Piscataqua River; however, they are not as abundant as the more commonly observed harbor seal. Anecdotal sighting information indicates that two hooded seals were observed from the Shipyard in August 2009, but no other observations have been recorded (NAVFAC Mid-Atlantic 2018). Hooded

seals were not observed during marine mammal monitoring or survey events that took place in 2017 and 2018 (Cianbro 2018a, b; NAVFAC Mid-Atlantic 2018).

Harp Seal

The harp seal is a highly migratory species, and its range can extend from the Canadian Arctic to New Jersey. In U.S. waters, the species has an increasing presence in the coastal waters between Maine and New Jersey (Waring *et al.* 2014). In the United States, they are considered members of the western North Atlantic stock and generally occur in New England waters from January through May (Waring *et al.* 2014). The observed influx of harp seals and geographic distribution in New England to mid-Atlantic waters is based primarily on strandings and secondarily on fishery bycatch.

Harp seals have been observed in the Piscataqua River; however, they are not as abundant as the more commonly observed harbor seal and were last documented in the river in 2016 (NAVFAC 2016). Harp seals were not observed during marine mammal monitoring or survey events that took place in 2017 and 2018 (Cianbro 2018a, b; NAVFAC Mid-Atlantic 2018; Lamontagne 2018).

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 3.

TABLE 3—MARINE MAMMAL HEARING GROUPS (NMFS, 2018)

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information. Five marine mammal species (one cetacean and four pinniped (all phocid) species) have the reasonable potential to co-occur with the proposed survey activities. Please refer to Table 2. Of the cetacean species that may be present, the harbor porpoise is classified as a high-frequency cetacean.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section includes a summary and discussion of the ways that components of the specified activity may impact marine mammals and their habitat. The *Estimated Take* section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The *Negligible Impact Analysis and Determination* section considers the content of this section, the *Estimated Take* section, and the *Proposed Mitigation* section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks.

Potential impacts to marine mammals from the Portsmouth Naval Shipyard modification and expansion project are from noise generated during in-water pile driving activities.

Acoustic Effects

Acoustic effects to marine mammals from the proposed Portsmouth Naval Shipyard modification and expansion construction mainly include behavioral disturbance and temporary masking for animals in the area. A few individual animals could experience mild levels of temporary and/or permanent hearing threshold shift.

The Portsmouth Naval Shipyard modification and expansion construction project using in-water pile driving could adversely affect marine mammal species and stocks by exposing them to elevated noise levels in the vicinity of the activity area.

Threshold Shift (noise-induced loss of hearing)—Exposure to high intensity sound for a sufficient duration may result in auditory effects such as a noise-induced threshold shift (TS)—an increase in the auditory threshold after exposure to noise (Finneran *et al.,* 2005). Factors that influence the amount of threshold shift include the amplitude, duration, frequency content, temporal pattern, and energy distribution of noise exposure. The magnitude of hearing threshold shift normally decreases over time following cessation of the noise exposure. The amount of TS just after exposure is the initial TS. If the TS eventually returns to zero (*i.e.,* the threshold returns to the pre-exposure

value), it is a temporary threshold shift (TTS) (Southall *et al.,* 2007). When animals exhibit reduced hearing sensitivity (*i.e.,* sounds must be louder for an animal to detect them) following exposure to an intense sound or sound for long duration, it is referred to as a noise-induced TS. An animal can experience TTS or permanent threshold shift (PTS). TTS can last from minutes or hours to days (*i.e.,* there is complete recovery), can occur in specific frequency ranges (*i.e.,* an animal might only have a temporary loss of hearing sensitivity between the frequencies of 1 and 10 kHz), and can be of varying amounts (for example, an animal's hearing sensitivity might be reduced initially by only 6 dB or reduced by 30 dB). PTS is permanent, but some recovery is possible. PTS can also occur in a specific frequency range and amount as mentioned above for TTS.

For marine mammals, published data are limited to the captive bottlenose dolphin, beluga, harbor porpoise, and Yangtze finless porpoise (Finneran, 2015). For pinnipeds in water, data are limited to measurements of TTS in harbor seals, an elephant seal, and California sea lions (Kastak *et al.,* 1999, 2005; Kastelein *et al.,* 2012b).

Lucke *et al.* (2009) found a TS of a harbor porpoise after exposing it to airgun noise with a received sound pressure level (SPL) at 200.2 dB (peak-to-peak) re: 1 micropascal (μPa), which corresponds to a sound exposure level of 164.5 dB re: 1 μPa^2 s after integrating exposure. Because the airgun noise is a broadband impulse, one cannot directly determine the equivalent of root mean square (rms) SPL from the reported peak-to-peak SPLs. However, applying a conservative conversion factor of 16 dB for broadband signals from seismic surveys (McCauley, *et al.,* 2000) to correct for the difference between peak-to-peak levels reported in Lucke *et al.* (2009) and rms SPLs, the rms SPL for TTS would be approximately 184 dB re: 1 μPa, and the received levels associated with PTS (Level A harassment) would be higher. Therefore, based on these studies, NMFS recognizes that TTS of harbor porpoises is lower than other cetacean species empirically tested (Finneran & Schlundt, 2010; Finneran *et al.,* 2002; Kastelein and Jennings, 2012).

Marine mammal hearing plays a critical role in communication with conspecifics, and interpretation of environmental cues for purposes such as predator avoidance and prey capture. Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious (similar to those discussed in auditory masking, below). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that occurs during a time where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts. Also, depending on the degree and frequency range, the effects of PTS on an animal could range in severity, although it is considered generally more serious because it is a permanent condition. Of note, reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.,* 2007), so one can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

Masking—In addition, chronic exposure to excessive, though not high-intensity, noise could cause masking at particular frequencies for marine mammals, which utilize sound for vital biological functions (Clark *et al.,* 2009). Acoustic masking is when other noises such as from human sources interfere with animal detection of acoustic signals such as communication calls, echolocation sounds, and environmental sounds important to marine mammals. Therefore, under certain circumstances, marine mammals whose acoustical sensors or environment are being severely masked could also be impaired from maximizing their performance fitness in survival and reproduction.

Masking occurs at the frequency band that the animals utilize. Therefore, since noise generated from vibratory pile driving is mostly concentrated at low frequency ranges, it may have less effect on high frequency echolocation sounds by odontocetes (toothed whales). However, lower frequency man-made noises are more likely to affect detection of communication calls and other potentially important natural sounds such as surf and prey noise. It may also affect communication signals when they occur near the noise band and thus reduce the communication space of animals (*e.g.,* Clark *et al.,* 2009) and cause increased stress levels (*e.g.,* Foote *et al.,* 2004; Holt *et al.,* 2009).

Unlike TS, masking, which can occur over large temporal and spatial scales, can potentially affect the species at population, community, or even ecosystem levels, as well as individual levels. Masking affects both senders and receivers of the signals and could have long-term chronic effects on marine mammal species and populations. Recent science suggests that low frequency ambient sound levels have increased by as much as 20 dB (more than three times in terms of SPL) in the world's ocean from pre-industrial periods, and most of these increases are from distant shipping (Hildebrand, 2009). For the Navy's Portsmouth Naval Shipyard modification and expansion construction project, noises from pile driving contribute to the elevated ambient noise levels in the project area, thus increasing potential for or severity of masking. Baseline ambient noise levels in the vicinity of project area are high due to nearby industrial activities surrounding the shipyard area.

Behavioral Disturbance—Finally, marine mammals' exposure to certain sounds could lead to behavioral disturbance (Richardson *et al.,* 1995), such as changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where noise sources are located; and/or flight responses (*e.g.,* pinnipeds flushing into water from haulouts or rookeries).

The onset of behavioral disturbance from anthropogenic noise depends on both external factors (characteristics of noise sources and their paths) and the receiving animals (hearing, motivation, experience, demography) and is also difficult to predict (Southall *et al.,* 2007). Currently NMFS uses a received level of 160 dB re 1 μPa (rms) to predict the onset of behavioral disturbance from intermittent noises (such as impact pile driving), and 120 dB re 1 μPa (rms) for continuous noises (such as vibratory pile driving). For the Portsmouth Naval Shipyard modification and expansion construction project, both 160- and 120-dB levels are considered for effects analysis because the Navy plans to conduct both impact and vibratory pile driving.

The biological significance of many of these behavioral disturbances is difficult to predict, especially if the detected disturbances appear minor. However, the consequences of behavioral modification could be biologically significant if the change affects growth, survival, and/or reproduction, which depends on the severity, duration, and context of the effects.

Potential Effects on Marine Mammal Habitat

Temporary and localized reduction in water quality will occur as a result of in-water construction activities. Most of this effect will occur during the installation of piles when bottom sediments are disturbed. Effects to turbidity and sedimentation are expected to be short-term, minor, and localized. Currents are strong in the area and, therefore, suspended sediments in the water column should dissipate and quickly return to background levels. Following the completion of sediment-disturbing activities, the turbidity levels are expected to return to normal ambient levels following the end of construction. Turbidity within the water column has the potential to reduce the level of oxygen in the water and irritate the gills of prey fish species in the proposed project area. However, turbidity plumes associated with the project would be temporary and localized, and fish in the proposed project area would be able to move away from and avoid the areas where plumes may occur. Therefore, it is expected that the impacts on prey fish species from turbidity, and therefore on marine mammals, would be minimal and temporary. In general, the area likely impacted by the project is relatively small compared to the available habitat in Great Bay Estuary, and there is no biologically important area for marine mammals that could be affected. As a result, activity at the project site would be inconsequential in terms of its effects on marine mammal foraging.

The greatest potential impact to fish during construction would occur during impact pile driving when pile driving will exceed the established underwater noise injury thresholds for fish. However, the duration of impact pile driving would be limited to the final stage of installation (''proofing'') after the pile has been driven as close as practicable to the design depth with a vibratory driver. Vibratory pile driving would possibly elicit behavioral reactions from fish such as temporary avoidance of the area but is unlikely to cause injuries to fish or have persistent effects on local fish populations. In addition, it should be noted that the area in question is low-quality habitat since it is already highly developed and experiences a high level of anthropogenic noise from normal Shipyard operations and other vessel traffic. In general, impacts on marine mammal prey species are expected to be minor and temporary.

All marine mammal species using habitat near the proposed project area are primarily transiting the area; no known foraging or haulout areas are located within 1.5 miles of the proposed project area. The most likely impacts on marine mammal habitat for the project are from underwater noise, turbidity, and potential effects on the food supply. However, it is not expected that any of these impacts would be significant.

Construction may have temporary impacts on benthic invertebrate species, another marine mammal prey source. Direct benthic habitat loss would result with the permanent loss of approximately 3.5 acres of benthic habitat from construction of the super flood basin. However, the areas to be permanently removed are beneath and adjacent to the existing berths along the Shipyard's industrial waterfront and are regularly disturbed as part of the construction dredging to maintain safe navigational depths at the berths. Further, vessel activity at the berths creates minor disturbances of benthic habitats (*e.g.,* vessel propeller wakes) during waterfront operations. Therefore, impacts of the project are not likely to have adverse effects on marine mammal foraging habitat in the proposed project area.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization through this IHA, which will inform both NMFS' consideration of ''small numbers'' and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would primarily be by Level B harassment, as noise generated from in-water pile driving (vibratory and impact) has the potential to result in disruption of behavioral patterns for individual marine mammals. There is also some potential for auditory injury (Level A harassment) to result for some harbor porpoises and harbor and gray seals. The proposed mitigation and monitoring measures are expected to minimize the severity of such taking to the extent practicable.

As described previously, no mortality is anticipated or proposed to be authorized for this activity. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimate.

Acoustic Thresholds

Using the best available science, NMFS has developed acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment for non-explosive sources—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.,* 2007, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 120 dB re 1 μPa (rms) for continuous (*e.g.,* vibratory pile-driving, drilling) and above 160 dB re 1 μPa (rms) for impulsive and/or intermittent (*e.g.,* impact pile driving) sources.

The Navy's Portsmouth Naval Shipyard modification and expansion project includes the use of continuous (vibratory pile driving and down-the-hole driving by rock drilling) and impulsive (impact pile driving) sources, and therefore the 120 and 160 dB re 1 μPa (rms) are applicable.

Level A harassment for non-explosive sources—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). The Navy's Portsmouth Naval Shipyard modification and expansion includes the use of impulsive (impact pile driving) and non-impulsive (vibratory pile driving and down-the-hole driving) sources.

These thresholds are provided in the table below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS' 2018 Technical Guidance, which may be accessed at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 4—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing Group	PTS onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	*Cell 2:* $L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans.	*Cell 3:* $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	*Cell 4:* $L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	*Cell 6:* $L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{pk,flat:}$ 218 dB; $L_{E,PW,24h}$: 185 dB	*Cell 8:* $L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	*Cell 10:* $L_{E,OW,24h}$: 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μPa, and cumulative sound exposure level (L_E) has a reference value of 1μPa²s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript "flat" is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds, which include source levels and transmission loss coefficient.

Source Levels

The project includes impact pile driving, vibratory pile driving and pile removal, and drilling for down-the-hole piling activities. Source levels of pile driving activities are based on reviews of measurements of the same or similar types and dimensions of piles available in the literature. Based on this review, the following source levels are assumed for the underwater noise produced by construction activities:

- Vibratory driving of 36-inch steel piles would be assumed to generate a root-mean-squared (rms) sound pressure level (SPL) and sound exposure level (SEL) of 175 dB re 1 μPa²-sec at 10 m, based on the averaged source level of the same type of pile reported by California Department of Transportation (Caltrans) in a pile driving source level compendium document (Caltrans, 2015);
- Impact driving of 36-inch steel piles would be assumed to generate an instantaneous peak SPL (SPL_{pk}) of 209 dB re 1 μPa, an rms SPL of 198 dB re 1 μPa, and single-strike SEL (SEL_{ss}) of 183 dB re 1 μPa²-sec at the 10 m distance, based on the weighted average of similar pile driving at the Bangor Naval Base, Naval Base Point Loma, CA (NAVFAC 2012), Washington State Department of Transportation (WSDOT) Anacortes Ferry Terminal (Laughlin 2012), and WSDOT Mukilteo Ferry Terminal (Laughlin 2007) that was analyzed in the Navy New London Submarine Base dock construction IHA application (NAVFAC 2016);
- Vibratory removal of 14-inch steel H-piles is conservatively assumed to have rms SPL and SEL values of 158 dB re 1 μPa²-sec at 10 m distance based on a relatively large set of measurements from the vibratory installation of 14-inch H-piles reported by Caltrans (2015);
- Impact driving of 14-inch steel H-piles is assumed to generate a SPL_{pk} of 194 dB re 1μPa, rms SPL of 177 dB re 1 μPa, and SEL_{ss} of 162 dB re 1 μPa²-sec at 10 m distance based on measurements on the same piles conducted during the Portsmouth Naval Shipyard construction in 2018 (NAVFAC Mid-Atlantic, 2018);
- Vibratory driving of 18- and 24-inch sheet pile is assumed to have an rms SPL and SEL of 163 dB re 1 μPa²-sec based on measurements conducted at 10 m by the NAVFAC Mid-Atlantic (2018);
- Impact driving of 18- and 24-inch sheet pile is assumed to have a SPL_{pk} of 205 dB re 1 μPa, an rms SPL of 190 dB re 1 μPa, and a SEL_{ss} of 180 dB re 1 μPa²-sec based on data reported in the Caltrans compendium (Caltrans 2015) for the same piles;
- Down-the-hole drilling of 96-inch steel pile casing is assumed to have an rms SPL and SEL of 166.2 dB re 1 μPa²-sec based on measurements conducted at the Kodiak Ferry Terminal, AK (Austin *et al.,* 2016);
- Vibratory pile driving of 16-inch steel pile is assumed to have an rms SPL and SEL of 162 dB re 1 μPa²-sec based on measurements for the same piles at Naval Base Kitsap at Bangor, WA (Illingworth and Rodkin 2013); and
- Impact driving of 16-inch steel pile is assumed to have a SPL_{pk} of 182 dB re 1 μPa, an rms SPL of 163 dB re 1 μPa, and a SEL_{ss} of 158 dB re 1 μPa²-sec based on levels from the same pile reported in the Caltrans compendium (Caltrans 2015).

A summary of source levels from different pile driving activities is provided in Table 5.

TABLE 5—SUMMARY OF IN-WATER PILE DRIVING SOURCE LEVELS

[At 10 m from source]

Method	Pile type/size (inch)	SEL, dB re 1 μPa²-s	SPL_{rms}, dB re 1 μPa	SPL_{pk}, dB re 1 μPa	Measured distance (m)	Origin
Vibratory pile driving	Steel, 36-inch	175	175	NA	10	Caltrans.
Impact pile driving	Steel, 36-inch	183	198	209	10	Navy New London.
Vibratory pile driving	Steel H, 14-inch	158	158	NA	10	Caltrans.
Impact pile driving	Steel H, 14-inch	162	177	194	10	Navy Portsmouth SSV.
Vibratory pile driving	Steel sheet, 24-inch & 18-inch	163	163	NA	10	NAVFAC Atlantic Fleet.
Impact pile driving	Steel sheet, 24-inch & 18-inch	180	190	205	10	Caltrans.
Down-the-hole piling	Steel pile casing 96-inch	166.2	166.2	NA	10	Kodiak, AK.
Vibratory pile driving	Steel, 16-inch	162	162	NA	10	Naval Base Kitsap Bangor, WA.
Impact pile driving	Steel, 16-inch	158	163	182	10	Caltrans.

These source levels are used to compute the Level A harassment zones and to estimate the Level B harassment zones. For Level A harassment zones, since the peak source levels for are below the injury thresholds, cumulative SEL were used to do the calculations using the NMFS acoustic guidance (NMFS 2018).

The Level B harassment distances for pile driving are calculated using practical spreading with source levels provided in Table 5. Ensonified areas (A) are calculated using the following equation.

$$A = \pi R^2 \qquad (1)$$

where R is the harassment distance.

However, the maximum distance from the source is capped at 10,000 m (6.2 miles) due to landmass interception in the surrounding area. For this reason, the maximum area that could be ensonified by noise from pile driving activities is mapped at 0.8544 km² (0.33 square miles). Therefore, all calculated Level B harassment areas that are larger than 0.8544 km² based on Equation (1) are corrected to this maximum value.

When the original NMFS Technical Guidance (2016) was published, in recognition of the fact that ensonified area/volume could be more technically challenging to predict because of the duration component in the new thresholds, NMFS developed a User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to help predict takes. We note that because of some of the assumptions included in the methods used for these tools, we anticipate that isopleths produced are typically going to be overestimates of some degree, which may result in some degree of overestimate of Level A harassment take. However, these tools offer the best way to predict appropriate isopleths when more sophisticated 3D modeling methods are not available, and NMFS continues to develop ways to quantitatively refine these tools, and will qualitatively address the output where appropriate. For stationary sources such as in-water vibratory and impact pile driving, NMFS User Spreadsheet predicts the closest distance at which, if a marine mammal remained at that distance the whole duration of the activity, it would not incur PTS. Inputs used in the User Spreadsheet (pile driving duration or number of strikes for each pile, and the number of piles installed or removed per day), and the resulting isopleths are reported below in Table 6.

For all calculations, the results based on SEL_{ss} are larger than SPL_{pk}, therefore, distances calculated using SEL_{ss} are used to calculate the areas. The Level A harassment areas are calculated using the same Equation (1), with corrections to reflect the largest possible area of 0.8544 km² if the calculation value was larger.

The modeled distances to Level A and Level B harassment zones for various marine mammals are provided in Table 6. As discussed above, the only marine mammals that could occur in the vicinity of the project area are harbor porpoise (high-frequency cetacean) and four species of true seals (phocid).

TABLE 6—DISTANCES AND AREAS OF HARASSMENT ZONES

Pile type, size & driving method	Duration (sec) or number strikes per pile	Level A harassment				Level B harassment	
		HF cetacean		Phocid			
		Dist. (m)	Area (km²)	Dist. (m)	Area (km²)	Dist. (m)	Area (km²)
Vibratory drive 14-inch H-pile (2 pile/day)	300	1.9	0.000	0.8	0.000	3,414.5	*0.854
Impact drive 14-inch H-pile (2 pile/day)	300	33.7	0.036	15.1	0.007	135.9	0.06
Vibratory drive 24-inch sheet pile (12 pile/day)	300	13.7	0.001	5.6	0.001	7,356.4	0.854
Impact drive 18-inch & 24-inch sheet pile (12 pile/day)	300	1,763	0.854	792	0.854	1,000	0.854
Vibratory removal 14-inch H-pile (8 pile/day)	300	4.9	0.001	2	0.000	3,414	0.854
Vibratory drive 14-inch H-pile (1 pile/day)	300	1.2	0.000	0.5	0.000	3,414	0.854
Impact drive 14-inch H-pile (1 pile/day)	300	21.2	0.001	9.5	0.000	135.9	0.06
Down-hole drive 96-inch steel casing (0.5 pile/day)	28,800	56.5	0.010	23.2	0.002	10,000	0.854
Vibratory drive 36-inch steel pipe pile (1 pile/day)	300	16.5	0.001	6.8	0.000	10,000	0.854
Impact drive 36-inch steel pipe pile (1 pile/day)	300	533.1	0.439	239.5	0.123	3,414.5	0.854
Vibratory drive 16-inch steel pipe pile (1 pile/day)	300	2.2	0.000	0.9	0.000	6,310	0.854
Impact drive 16-inch steel pipe pile (1 pile/day)	300	11.5	0.000	5.2	0.000	15.8	0.008

*0.854 km² is the maximum ensonified area in the project area due to landmass that blocks sound propagation.

Marine Mammal Occurrence

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations.

Marine mammal density estimates for harbor porpoise, harbor seal, and gray seal are derived based on marine

mammal monitoring during 2017 and 2018 (CIANBRO 2018a, b). Density values were calculated from visual sightings of all marine mammals divided by the monitoring days (a total of 154 days) and the total ensonified area in the 2017 and 2018 activities (0.8401 km^2). Details used for calculations are provided in Table 7 and described below.

TABLE 7—MARINE MAMMAL SIGHTINGS AND RESULTING DENSITY IN THE VICINITY OF PORTSMOUTH NAVAL SHIPYARD PROJECT AREA

Species	2017 sighting (96 days)	2018 sighting (58 days)	Total sighting	Density (animal/day/km^2)
Harbor porpoise	3	2	5	0.04
Harbor seal	199	122	321	2.48
Gray seal	24	2	26	0.20

During construction monitoring in the project area 3 harbor porpoise were sighted between April and December of 2017 and 2 harbor porpoise were sighted in early August of 2018. From this data, density of harbor porpoise for the largest ensonified zone was determined to be 0.04/km^2. Harbor seals are the most common pinniped in the Piscataqua River near the Shipyard. Sightings of this species were recorded during monthly surveys conducted in 2017 as well as during Berth 11 construction monitoring in 2017 and 2018. Density for harbor seals based on the Berth 11 Waterfront Improvement Construction was determined to be 2.48/km^2. Sightings of gray seals were recorded during monthly surveys conducted in 2017 as well as during Berth 11 construction monitoring in 2017 and 2018. Density for harbor seals was based on the Berth 11 Waterfront Improvement Construction monitoring and was determined to be 0.20/km^2.

Hooded and harp seals are much rarer than the harbor and gray seals in the Piscataqua River, and no density information for these two species is available. To date, marine mammal monitoring during prior IHAs has not recorded a sighting of a hooded or harp seal in the project area.

Take Calculation and Estimation

Here we describe how the information provided above is brought together to produce a quantitative take estimate.

For marine mammals with known density information (*i.e.,* harbor porpoise, harbor seal, and gray seal), in general, estimated Level A harassment take numbers are calculated using the following equation:

$$\text{Estimated take} = \text{animal density} \times \text{ensonified area} \times \text{operating days} \qquad (2)$$

For Level B harassment takes, the same equation (2) was used but then adjusted by subtracting the estimated Level A harassment takes. However, the estimated takes are calculated assuming the animals are uniformly distributed within the action area without forming groups. In reality, porpoises and seals are often active in small groups of two to three animals. Therefore, to account for potential group encounters during the construction activity, the estimated Level B harassment takes are adjusted upwards to form the basis of the proposed take authorization.

NMFS authorized one Level B harassment take per month each of a hooded seal and a harp seal for the Berth 11 Waterfront Improvements Construction project in 2018. The Navy is requesting authorization of one Level B harassment take each of hooded seal and harp seal per month of construction from January through May when these species may occur (Total of 5 Level B harassment takes for each species).

A summary of estimated and proposed takes is presented in Table 8.

TABLE 8—ESTIMATED AND PROPOSED TAKES OF MARINE MAMMALS

Species	Estimated Level A take	Estimated Level B take	Estimated total take	Percent population
Harbor porpoise	5	12	17	0.02
Harbor seal	287	400	687	0.91
Gray seal	25	35	60	0.21
Hooded seal	0	5	5	0.00
Harp seal	0	5	5	0.00

Proposed Mitigation

In order to issue an IHA under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses. NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

1. Time Restriction.

Work would occur only during daylight hours, when visual monitoring of marine mammals can be conducted.

2. Establishing and Monitoring Level A and Level B Harassment Zones and Shutdown Zones.

Before the commencement of in-water construction activities, which include impact pile driving, vibratory pile driving and pile removal, and down-the-hole drilling, the Navy shall establish Level A harassment zones where received underwater SEL_{cum} could cause PTS (see Table 6 above).

The Navy shall also establish Level B harassment zones where received underwater SPLs are higher than 160 dB_{rms} re 1 μPa for impulsive noise sources (impact pile driving) and 120 dB_{rms} re 1 μPa for continuous noise sources (vibratory pile driving, pile removal, and down-the-hole drilling) (see Table 6 above).

The Navy shall establish shutdown zones based on Level A harassment distance up to a maximum of 110 m for harbor porpoise and 50 m for seals from the source but no less than 10 m for all in-water construction work. A summary of the shutdown zones is provided in Table 9.

TABLE 9—SHUTDOWN DISTANCES FOR VARIOUS PILE DRIVING ACTIVITIES AND MARINE MAMMAL HEARING GROUPS

Pile type, size & driving method	Shutdown distance (m)	
	HF cetacean	Phocid
Vibratory drive 14-inch H-pile (2 pile/day)	10	10
Impact drive 14-inch H-pile (2 pile/day)	35	20
Vibratory drive 24-inch sheet pile (12 pile/day)	20	10
Impact drive 18-inch & 24-inch sheet pile (12 pile/day)	110	50
Vibratory removal 14-inch H-pile (8 pile/day)	10	10
Vibratory drive 14-inch H-pile (1 pile/day)	10	10
Impact drive 14-inch H-pile (1 pile/day)	25	10
Down-the-hole drilling 96-inch steel casing (0.5 pile/day)	60	25
Vibratory drive 36-inch steel pipe pile (1 pile/day)	20	10
Impact drive 36-inch steel pipe pile (1 pile/day)	110	50
Vibratory drive 16-inch steel pipe pile (1 pile/day)	10	10
Impact drive 16-inch steel pipe pile (1 pile/day)	15	10

If marine mammals are found within the exclusion zone, pile driving of the segment would be delayed until they move out of the area. If a marine mammal is seen above water and then dives below, the contractor would wait 15 minutes. If no marine mammals are seen by the observer in that time it can be assumed that the animal has moved beyond the exclusion zone.

If pile driving of a segment ceases for 30 minutes or more and a marine mammal is sighted within the designated exclusion zone prior to commencement of pile driving, the observer(s) must notify the pile driving operator (or other authorized individual) immediately and continue to monitor the exclusion zone. Operations may not resume until the marine mammal has exited the exclusion zone or 15 minutes have elapsed since the last sighting.

3. Shutdown Measures.

The Navy shall implement shutdown measures if a marine mammal is detected within the shutdown zones listed in Table 9.

Further, the Navy shall implement shutdown measures if the number of authorized takes for any particular species reaches the limit under the IHA (if issued) and such marine mammals are sighted within the vicinity of the project area and are approaching the Level B harassment zone during in-water construction activities.

4. Soft Start.

The Navy shall implement soft start techniques for impact pile driving. The Navy shall conduct an initial set of three strikes from the impact hammer at 40 percent energy, followed by a 1-minute waiting period, then two subsequent three strike sets. Soft start shall be required for any impact driving, including at the beginning of the day, and at any time following a cessation of impact pile driving of thirty minutes or longer.

Whenever there has been downtime of 30 minutes or more without impact driving, the contractor shall initiate impact driving with soft-start procedures described above.

Based on our evaluation of the required measures, NMFS has preliminarily determined that the prescribed mitigation measures provide the means effecting the least practicable adverse impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved

understanding of one or more of the following:

• Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);

• Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);

• Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;

• How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;

• Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and

• Mitigation and monitoring effectiveness.

Proposed Monitoring Measures

The Navy shall employ trained protected species observers (PSOs) to conduct marine mammal monitoring for its Portsmouth Naval Shipyard modification and expansion project. The purposes of marine mammal monitoring are to implement mitigation measures and learn more about impacts to marine mammals from the Navy's construction activities. The PSOs will observe and collect data on marine mammals in and around the project area for 30 minutes before, during, and for 30 minutes after all pile removal and pile installation work.

Protected Species Observer Qualifications

NMFS-approved PSOs shall meet the following requirements:

1. Independent observers (*i.e.,* not construction personnel) are required;

2. At least one observer must have prior experience working as an observer;

3. Other observers may substitute education (undergraduate degree in biological science or related field) or training for experience;

4. Where a team of three or more observers are required, one observer should be designated as lead observer or monitoring coordinator. The lead observer must have prior experience working as an observer; and

5. NMFS will require submission and approval of observer CVs.

Marine Mammal Monitoring Protocols

The Navy shall conduct briefings between construction supervisors and crews and the PSO team prior to the start of all pile driving activities, and when new personnel join the work, in order to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures. All personnel working in the project area shall watch the Navy's Marine Species Awareness Training video. An informal guide shall be included with the monitoring plan to aid in identifying species if they are observed in the vicinity of the project area.

The Navy will monitor all Level A harassment zones and at least two-thirds of the Level B harassment zones before, during, and after pile driving activities. The Marine Mammal Monitoring Plan would include the following procedures:

• PSOs will be primarily located on docks and piers at the best vantage point(s) in order to properly see the entire shutdown zone(s);

• PSOs will be located at the best vantage point(s) to observe the zone associated with behavioral impact thresholds;

• During all observation periods, PSOs will use high-magnification (25X), as well as standard handheld (7X) binoculars, and the naked eye to search continuously for marine mammals;

• Monitoring distances will be measured with range finders. Distances to animals will be based on the best estimate of the PSO, relative to known distances to objects in the vicinity of the PSO;

• Bearings to animals will be determined using a compass;

• Pile driving shall only take place when the shutdown zones are visible and can be adequately monitored. If conditions (*e.g.,* fog) prevent the visual detection of marine mammals, activities with the potential to result in Level A harassment shall not be initiated. If such conditions arise after the activity has begun, impact pile driving would be halted but vibratory pile driving or extraction would be allowed to continue;

• At least two (2) PSOs shall be posted to monitor marine mammals during in-water pile driving and pile removal;

• Pre-Activity Monitoring:

The shutdown zones will be monitored for 30 minutes prior to in-water construction/demolition activities. If a marine mammal is present within a shutdown zone, the activity will be delayed until the animal(s) leaves the shutdown zone. Activity will resume only after the PSO has determined that, through sighting or by waiting 15 minutes, the animal(s) has moved outside the shutdown zone. If a marine mammal is observed approaching the shutdown zone, the PSO who sighted that animal will notify all other PSOs of its presence.

• During Activity Monitoring:

If a marine mammal is observed entering the Level A or Level B harassment zones outside the shutdown zone, the pile segment being worked on will be completed without cessation, unless the animal enters or approaches the shutdown zone, at which point all pile driving activities will be halted. If an animal is observed within the exclusion zone during pile driving, then pile driving will be stopped as soon as it is safe to do so. Pile driving can only resume once the animal has left the shutdown zone of its own volition or has not been re-sighted for a period of 15 minutes.

• Post-Activity Monitoring:

Monitoring of all Level A harassment zones and two-thirds of the Level B harassment zones will continue for 30 minutes following the completion of the activity.

Information Collection: PSOs shall collect the following information during marine mammal monitoring:

• Date and time that monitored activity begins and ends for each day conducted (monitoring period);

• Construction activities occurring during each daily observation period, including how many and what type of piles driven;

• Deviation from initial proposal in pile numbers, pile types, average driving times, etc.;

• Weather parameters in each monitoring period (*e.g.,* wind speed, percent cloud cover, visibility);

• Water conditions in each monitoring period (*e.g.,* sea state, tide state);

• For each marine mammal sighting:

○ Species, numbers, and, if possible, sex and age class of marine mammals;

○ Description of any observable marine mammal behavior patterns, including bearing and direction of travel and distance from pile driving activity;

○ Location and distance from pile driving activities to marine mammals and distance from the marine mammals to the observation point; and

○ Estimated amount of time that the animals remained in the Level B zone;

• Description of implementation of mitigation measures within each monitoring period (*e.g.,* shutdown or delay);

• Other human activity in the area within each monitoring period

To verify the required monitoring distance, the shutdown zones and harassment zones will be determined by using a range finder or hand-held global positioning system device.

Reporting Measures

The Navy is required to submit a draft monitoring report within 90 days after completion of the construction work or the expiration of the IHA (if issued), whichever comes earlier. If Navy intends to renew the IHA (if issued) in a subsequent year, a monitoring report should be submitted no less than 60 days before the expiration of the current IHA (if issued). This report would detail the monitoring protocol, summarize the data recorded during monitoring, and estimate the number of marine mammals that may have been harassed. NMFS would have an opportunity to provide comments on the report, and if NMFS has comments, The Navy would address the comments and submit a final report to NMFS within 30 days.

In addition, NMFS would require the Navy to notify NMFS' Office of Protected Resources and NMFS' Greater Atlantic Stranding Coordinator within 48 hours of sighting an injured or dead marine mammal in the construction site. The Navy shall provide NMFS and the Stranding Network with the species or description of the animal(s), the condition of the animal(s) (including carcass condition, if the animal is dead), location, time of first discovery, observed behaviors (if alive), and photo or video (if available).

In the event that the Navy finds an injured or dead marine mammal that is not in the construction area, the Navy would report the same information as listed above to NMFS as soon as operationally feasible.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, this introductory discussion of our analysis applies to all of the species listed in Table 2, given that the anticipated effects of the Navy's Portsmouth Naval Shipyard modification and expansion construction project activities involving pile driving and pile removal on marine mammals are expected to be relatively similar in nature. There is no information about the nature or severity of the impacts, or the size, status, or structure of any species or stock that would lead to a different analysis by species for this activity, or else species-specific factors would be identified and analyzed.

Although some individual harbor porpoises and harbor and gray seals are estimated to experience Level A harassment in the form of PTS if they stay within the Level A harassment zone during the entire pile driving for the day, the degree of injury is expected to be mild and is not likely to affect the reproduction or survival of the individual animals. It is expected that, if hearing impairments occurs, most likely the affected animal would lose a few dB in its hearing sensitivity, which in most cases is not likely to affect its survival and recruitment. Hearing impairment that might occur for these individual animals would be limited to the dominant frequency of the noise sources, *i.e.,* in the low-frequency region below 2 kHz. Nevertheless, as for all marine mammal species, it is known that in general these pinnipeds will avoid areas where sound levels could cause hearing impairment. Therefore it is not likely that an animal would stay in an area with intense noise that could cause severe levels of hearing damage.

Under the majority of the circumstances, anticipated takes are expected to be limited to short-term Level B harassment. Marine mammals present in the vicinity of the action area and taken by Level B harassment would most likely show overt brief disturbance (startle reaction) and avoidance of the area from elevated noise levels during pile driving and pile removal. Given the limited estimated number of incidents of Level A and Level B harassment and the limited, short-term nature of the responses by the individuals, the impacts of the estimated take cannot be reasonably expected to, and are not reasonably likely to, rise to the level that they would adversely affect either species at the population level, through effects on annual rates of recruitment or survival.

There are no known important habitats, such as rookeries or haulouts, in the vicinity of the Navy's proposed Portsmouth Naval Shipyard modification and expansion construction project. The project also is not expected to have significant adverse effects on affected marine mammals' habitat, including prey, as analyzed in detail in the ''Anticipated Effects on Marine Mammal Habitat'' section.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

• No mortality is anticipated or authorized;

• Some individual marine mammals are anticipated to experience a mild level of PTS, but the degree of PTS is not expected to affect their survival;

• Most adverse effects to marine mammals are temporary behavioral harassment; and

• No biologically important area is present in or near the proposed construction area.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized

under section 101(a)(5)(A) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals.

The estimated takes are below one percent of the population for all marine mammals (Table 8).

Based on the analysis contained herein of the proposed activity (including the prescribed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

No incidental take of ESA-listed species is proposed for authorization or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to the Navy for conducting Portsmouth Naval Shipyard Dry Dock 1 Modification and Expansion in Kittery, Maine, between October 1, 2019, and September 30, 2010, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.*

Request for Public Comments

We request comment on our analyses, the proposed authorization, and any other aspect of this Notice of Proposed IHA for the proposed issuance of an IHA to the Navy incidence to conduct Portsmouth Naval Shipyard Dry Dock 1 Modification and Expansion in Kittery, Maine, between October 1, 2019, and September 30, 2010. We also request comment on the potential for renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform our final decision on the request for MMPA authorization.

On a case-by-case basis, NMFS may issue a second one-year IHA without additional notice when (1) another year of identical or nearly identical activities as described in the Specified Activities section is planned or (2) the activities would not be completed by the time the IHA expires and a second IHA would allow for completion of the activities beyond that described in the Dates and Duration section, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to expiration of the current IHA;
- The request for renewal must include the following:

(1) An explanation that the activities to be conducted beyond the initial dates either are identical to the previously analyzed activities or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, take estimates, or mitigation and monitoring requirements; and

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized; and

- Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures remain the same and appropriate, and the original findings remain valid.

Dated: March 28, 2019.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2019–06537 Filed 4–3–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2019–ICCD–0046]

Agency Information Collection Activities; Comment Request; Campus Equity in Athletics Disclosure Act (EADA) Survey

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before June 3, 2019.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2019–ICCD–0046. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 550 12th Street SW, PCP, Room 9086, Washington, DC 20202–0023.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact George Smith, 202–453–7757.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection

requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Campus Equity in Athletics Disclosure Act (EADA) Survey.

OMB Control Number: 1840–0827.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: Private Sector; State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 2,079.

Total Estimated Number of Annual Burden Hours: 11,435.

Abstract: The collection of information is necessary under section 485 of the Higher Education Act of 1965, as amended, with the goal of increasing transparency surrounding college athletics for students, prospective students, parents, employees and the general public. The survey is a collection tool to compile the annual data on college athletics. The data is collected from the individual institutions by ED and is made available to the public through the Equity in Athletics Data Analysis Cutting Tool as well as the College Navigator.

Dated: April 1, 2019.

Kate Mullan,

PRA Coordinator, Information Collection Clearance Program, Information Management Branch, Office of the Chief Information Officer.

[FR Doc. 2019–06574 Filed 4–3–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2019–ICCD–0047]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and approval; Comment Request; School Survey on Crime and Safety (SSOCS) 2018 and 2020 Update

AGENCY: National Center for Education Statistics (NCES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before May 6, 2019.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2019–ICCD–0047. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 550 12th Street SW, PCP, Room 9089, Washington, DC 20202–0023.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Kashka Kubzdela, 202–245–7377 or email *NCES.Information.Collections@ed.gov.*

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: School Survey on Crime and Safety (SSOCS) 2018 and 2020 Update.

OMB Control Number: 1850–0761.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 7,721.

Total Estimated Number of Annual Burden Hours: 2,947.

Abstract: The School Survey on Crime and Safety (SSOCS) is a nationally representative survey of elementary and secondary school principals that serves as the primary source of school-level data on crime and safety in public schools. SSOCS is the only recurring federal survey collecting detailed information on the incidence, frequency, seriousness, and nature of violence affecting students and school personnel from the school's perspective. Data are also collected on frequency and types of disciplinary actions taken for select offenses; perceptions of other disciplinary problems, such as bullying, verbal abuse and disorder in the classroom; the presence and role of school security staff; parent and community involvement; staff training; mental health services available to students; and, school policies and programs concerning crime and safety. Prior administrations of SSOCS were conducted in 2000, 2004, 2006, 2008, 2010, 2016, and 2018. The 2018 and 2020 SSOCS full-scale data collections were approved in July 2017 with the latest change request approved in May 2018 (OMB# 1850–0761 v.15). This request adds updates for the 2020 SSOCS full-scale data collection

involving revisions to: (1) The approved incentive and web experiments, (2) communication materials, and (3) SSOCS:2020 questionnaire (nonsubstantive changes and removal of items).

Dated: April 1, 2019.

Stephanie Valentine,

PRA Clearance Coordinator, Information Collection Clearance Program, Information Management Branch, Office of the Chief Information Officer.

[FR Doc. 2019–06606 Filed 4–3–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Comprehensive Centers Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for new awards for Fiscal Year (FY) 2019 for the Comprehensive Centers (CC) program, Catalog of Federal Domestic Assistance (CFDA) number 84.283B.

DATES:

Applications Available: April 4, 2019.

Deadline for Transmittal of Applications: May 24, 2019.

Deadline for Intergovernmental Review: July 23, 2019.

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FR 3768) and available at *https://www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf.*

FOR FURTHER INFORMATION CONTACT: Kim Okahara, U.S. Department of Education, 400 Maryland Avenue SW, Room 3E106, Washington, DC 20202–6450. Telephone: (202) 453–6930. Email: *kim.okahara@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The CC program supports the establishment of not less than 20 Comprehensive Centers to provide capacity-building services to State educational agencies (SEAs), regional educational agencies (REAs), local educational agencies (LEAs), and schools that improve educational outcomes for all students, close achievement gaps, and improve the quality of instruction.

Priorities: The absolute priorities are from the notice of final priorities, requirements, definitions, and performance measures for this program (NFP), published elsewhere in this issue of the **Federal Register**. Competitive preference priority 1 for All Centers is from 34 CFR 75.225(c). Competitive preference priorities 2 through 6 are from the Secretary's Final Supplemental Priorities and Definitions for Discretionary Grant Programs published in the **Federal Register** on March 2, 2018 (83 FR 9096) (Supplemental Priorities) .

Absolute Priority: This competition contains an absolute priority for Regional Centers (Absolute Priority 1) and an absolute priority for the National Center (Absolute Priority 2). Under 34 CFR 75.105(c)(3), we consider only applications that meet one of these priorities.

Note: If an eligible entity wants to apply for funding for more than one Center, it must submit a separate application for each Center. In addition, the Department prefers that an eligible entity applies for either the National Center or one or more Regional Centers. The Department will, however, consider multiple applications from one entity applying for one or more Regional Centers and the National Center as long as the entity submits a separate application for each Center.

Note: If an applicant submits multiple applications that fall within the funding range, after review and comparison of those applications, the Department may choose not to fund all applications that propose using the same project personnel or providing duplicative services as other fundable applications.

These priorities are:

Absolute Priority 1—Regional Centers.

Under this priority, applicants must demonstrate the following—

Regional Centers must provide high-quality intensive capacity-building services to State clients and recipients to identify, implement, and sustain effective evidence-based (as defined in this notice) programs, practices, and interventions that support improved educator and student outcomes. As appropriate, capacity-building services must assist clients and recipients in: (1) Carrying out approved Consolidated State Plans approved under the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act of 2015 (ESEA) with preference given to the implementation and scaling up of evidence-based programs, practices, and interventions that directly benefit recipients that have disadvantaged students or high percentages or numbers of students from low-income families as referenced in Title I, Part A of the ESEA (ESEA secs. 1113(a)(5) and 1111(d)) and recipients that are implementing comprehensive support and improvement activities or targeted support and improvement activities as referenced in Title I, Part A of the ESEA (ESEA sec. 1111(d)); (2) implementing and scaling-up evidence-based programs, practices, and interventions that address the unique educational obstacles faced by rural populations; (3) identifying and carrying out capacity-building services to clients that help States address corrective actions or results from audit findings and monitoring, conducted by the Department, that are programmatic in nature, at the request of the client; and (4) working with the National Center to identify trends and best practices, and develop cost-effective strategies to make their work available to as many REAs, LEAs, and schools in need of support as possible.

Applicants must propose to operate a Regional Center in one of the following regions:

Region 1: Massachusetts, Maine, New Hampshire, Vermont
Region 2: Connecticut, New York, Rhode Island
Region 3: Puerto Rico, Virgin Islands
Region 4: Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania
Region 5: Kentucky, Tennessee, Virginia, West Virginia
Region 6: Georgia, North Carolina, South Carolina
Region 7: Alabama, Florida, Mississippi
Region 8: Indiana, Michigan, Ohio
Region 9: Illinois, Iowa
Region 10: Minnesota, Wisconsin
Region 11: Nebraska, North Dakota, South Dakota, Wyoming
Region 12: Colorado, Kansas, Missouri
Region 13: Bureau of Indian Education, New Mexico, Oklahoma
Region 14: Arkansas, Louisiana, Texas
Region 15: Arizona, California, Nevada, Utah
Region 16: Alaska, Oregon, Washington
Region 17: Idaho, Montana
Region 18: Commonwealth of the Northern Mariana Islands, Federated States of Micronesia, Guam, Palau
Region 19: American Samoa, Hawaii, Republic of the Marshall Islands

Absolute Priority 2—National Center.

Under this priority, applicants must demonstrate the following—

The National Center must provide high-quality universal (*e.g.,* policy briefs) and targeted (*e.g.,* peer-to-peer exchanges and communities of practice that convene SEAs, REAs, LEAs, and

schools on a particular topic) capacity-building services to address the following: Common high-leverage problems identified in Regional Center State service plans (as outlined in the *Program Requirements for the National Center* (1)), common services to help address findings from finalized Department monitoring reports or audit findings related to programmatic issues, common implementation challenges faced by States and Regional Centers, and emerging national education trends.

As appropriate, universal and targeted capacity-building services must assist Regional Center clients and recipients to: (1) Implement approved ESEA Consolidated State Plans, with preference given to implementing and scaling evidence-based programs, practices, and interventions that directly benefit entities that have high percentages or numbers of students from low-income families as referenced in Title I, Part A of the ESEA (ESEA sec. 1113(a)(5) and 1111(d)) and recipients that are implementing comprehensive support and improvement activities or targeted support and improvement activities as referenced in Title I, Part A of the ESEA (ESEA sec. 1111(d)); and (2) implement and scale evidence-based programs, practices, and interventions that address the unique educational obstacles faced by rural populations. The work of the National Center must include the implementation of effective strategies for reaching and supporting as many SEAs, REAs, LEAs, and schools in need of services as possible.

Competitive Preference Priorities: This competition contains seven competitive preference priorities: One for both Regional Centers and the National Center; three for Regional Centers; and three for the National Center. For FY 2019 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i) we award up to 3 additional points as indicated within each competitive preference priority, depending on how well the application addresses the priority, for a maximum of 12 competitive preference priority points to an application.

These priorities are:

Priorities for All Centers (0 or 3 points total):

Competitive Preference Priority 1—-Novice Applicants.

Projects submitted by applicants that meet the definition of novice applicant (as defined in this notice) at the time they submit their application. (0 or 3 points)

Priorities for Regional Centers (up to 9 points total):

Competitive Preference Priority 2—Promoting Effective Instruction in Classrooms and Schools (up to 6 points):

Projects that are designed to address the following priority areas:

(1) Promoting innovative strategies to increase the number of students who have access to effective principals or other school leaders in schools that will be served by the project. (up to 3 points)

(2) Promoting innovative strategies to increase the number of students who have access to effective educators in schools that will be served by the project. (up to 3 points)

Competitive Preference Priority 3—Empowering Families and Individuals To Choose a High-Quality Education That Meets Their Unique Needs (up to 3 points total):

Projects that are designed to increase access to educational choice (as defined in this notice) for one or both of the following groups of children or students:

(i) Children or students in communities served by rural LEAs (as defined in this notice).

(ii) Students who are living in poverty (as defined in this notice) and are served by high-poverty schools (as defined in this notice), or are low-income individuals (as defined in this notice).

Priorities for the National Center (up to 9 points total):

Competitive Preference Priority 4—Promoting Effective Instruction in Classrooms and Schools (up to 3 points total):

Projects that are designed to address increasing the opportunities for high-quality preparation of, or professional development for, teachers or other educators of science, technology, engineering, math, or computer science (as defined in this notice). (up to 3 points)

Competitive Preference Priority 5—Promoting Science, Technology, Engineering, or Math (STEM) Education, With a Particular Focus on Computer Science (up to 3 points total):

Projects designed to improve student achievement or other educational outcomes in one or more of the following areas: Science, technology, engineering, math, or computer science (as defined in this notice). These projects must address evidence-based (as defined in this notice) and innovative approaches to expanding access to high-quality STEM education, including computer science. (up to 3 points)

Competitive Preference Priority 6—Empowering Families and Individuals To Choose a High-Quality Education That Meets Their Unique Needs (up to 3 points total):

Projects that are designed to address developing or increasing access to evidence-based (as defined in this notice) innovative models of educational choice (as defined in this notice).

Note: The details and parameters of the Department's expectations and involvement will be included in the cooperative agreement with each grantee.

Requirements: These requirements are from the notice of final priorities, requirements, definitions, and performance measures for this program (NFP), published elsewhere in this issue of the **Federal Register**, and apply to the FY 2019 grant competition and any subsequent year in which we make awards from the list of unfunded applications from this competition.

Program Requirements for Regional Centers: Applicants that receive grants under this program must:

(1) Develop a State service plan annually in consultation with each State's Chief State School Officers (CSSO) that includes the following elements: High-leverage problems to be addressed, phase of implementation (*e.g.,* needs assessment), capacity-building services to be delivered, key personnel responsible, key Department-funded technical assistance partners, milestones, outputs, outcomes, and, if appropriate, fidelity measures. The annual State service plans must be an update to the Regional Center's five-year plan submitted as part of the Regional Center's application. The annual State service plan elements must also correspond to the relevant sections of the FY 2019 CC Logic Model.

(2) Develop and implement an effective personnel management system that enables the Regional Center to efficiently obtain and retain the services of nationally recognized content experts and other consultants with direct experience working with SEAs, REAs, and LEAs. Personnel must demonstrate that they have the appropriate expertise to deliver quality, intensive services that meet client and recipient needs similar to those in the region to be served.

(3) Develop and implement an effective communications system that enables routine and ongoing exploration of client and recipient needs as well as feedback on services provided. The system must enable routine monitoring of progress toward agreed-upon outcomes, outputs, and milestones; periodic assessment of client satisfaction; and timely identification of changes in State contexts that may

impact the success of the project. The communications system must include processes for outreach activities (*e.g.,* regular promotion of services and products to clients and potential and current recipients, particularly at the local level), regular engagement and coordination with the National Center and partner organizations (*e.g.,* other federally funded technical assistance providers), use of feedback loops across organizational levels (Federal, State, and local), and regular engagement of stakeholders involved in or impacted by proposed services.

(4) Collaborate with the National Center to support client and recipient participation in learning opportunities (*e.g.,* multi-State and cross-regional peer-to-peer exchanges on high-leverage problems) and support participation of Regional Center staff in learning opportunities (*e.g.,* peer-to-peer exchanges on effective coaching systems), with the goal of reaching as many REAs, LEAs, and schools in need of services as possible while also providing high-quality services.

(5) Identify and enter into partnership agreements with national organizations, businesses, and industry for the purpose of supporting States in the implementation and scaling-up of evidence-based programs, practices, and interventions, as well as reducing duplication of services to States. Within 90 days of receiving funding for an award, provide copies of memoranda of understanding (MOUs) with the Regional Educational Laboratories (RELs) in the region that the Center serves and Department-funded technical assistance providers that are charged with supporting comprehensive, systemic changes in States or Department-funded technical assistance providers with particular expertise (*e.g.,* early learning or instruction for English language learners).

(6) Be located in the region the Center serves. The Project Director must be capable of managing all aspects of the Center and be either at minimum 0.75 FTE or there must be two Co-Project Directors each at minimum 0.5 FTE. The Project Director or Co-Project Directors and key personnel must also be able to provide on-site services at the intensity, duration, and modality appropriate to achieving agreed-upon milestones, outputs, and outcomes described in State service plans.

(7) Within 90 days of receiving funding for an award, demonstrate that it has secured client and partner commitments to carry out proposed State service plans.

Program Requirements for the National Center:

(1) Develop a national service plan annually in consultation with the Department and Regional Centers. The national service plan must take into account commonalities in identified high-leverage problems in State service plans, finalized Department monitoring and audit findings, implementation challenges faced by Regional Centers and States, and emerging national education trends. The annual national service plan must be an update to the National Center's five-year plan submitted as part of the Center's application. The annual national service plan must include, at a minimum, the following elements: High-leverage problems to be addressed, capacity-building services to be delivered, key personnel responsible, milestones, outputs, and outcome measures. The annual national service plan must also include evidence that the Center involved Regional Centers in identifying targeted and universal services that complement Regional Center services to improve client and recipient capacity.

(2) Maintain the CC network website with an easy-to-navigate design that meets government or industry-recognized standards for accessibility.

(3) Develop and implement an effective personnel management system that enables the Center to retain and efficiently obtain the services of education practitioners, researchers, policy professionals, and other consultants with direct experience with SEAs, REAs, and LEAs. Personnel must have a proven record of publishing in peer-reviewed journals, presenting at national conferences, and/or delivering quality adult learning experiences that meet client and recipient needs.

(4) Disseminate information (*e.g.,* instructional videos, toolkits, and briefs) and evidence-based practices to a variety of education stakeholders, including parents, students, and the general public, via multiple mechanisms such as the CC network website, social media, and other channels as appropriate.

(5) Disseminate State service plans, Center annual performance reports, and other materials through the CC network website and other channels as appropriate.

(6) Collaborate with Regional Centers to implement learning opportunities for recipients (*e.g.,* multi-State and cross-regional peer-to-peer exchanges on high-leverage problems) and develop learning opportunities for Regional Center staff to address implementation challenges (*e.g.,* peer-to-peer exchanges on effective coaching systems for district English language learners).

(7) Develop and implement an effective communications system that enables routine and ongoing exploration of Regional Center client and recipient needs. The system must enable routine monitoring of progress toward agreed-upon outcomes, outputs, and milestones; periodic assessment of client satisfaction; and timely identification of changes in Federal or State contexts that may impact success of the project. The communications system must include processes for outreach activities (*e.g.,* regular promotion of services and products to clients and potential and current recipients), use of feedback loops across organizational levels (Federal, State, and local), regular engagement and coordination with the Department, Regional Centers, and partner organizations (*e.g.,* federally funded technical assistance providers), and engagement of stakeholders involved in or impacted by proposed school improvement activities.

(8) Identify potential partners and enter into partnership agreements with other federally funded technical assistance providers, industry, national associations, and other organizations to support the implementation and scaling-up of evidence-based programs, practices, and interventions.

(9) Identify a Project Director that is either at minimum 0.75 FTE or two Co-Project Directors at minimum 0.5 FTE capable of managing all aspects of the CC.

(10) Within 90 days of receiving funding for an award, demonstrate that it has secured client and partner commitments to carry out the proposed national service plan.

Flexibility and Requirements for Regional Center Assignments:

Requirements. In the second fiscal year of the cooperative agreement, and in each subsequent fiscal year, an SEA could indicate to the Department its desire to affiliate with a different Regional Center, regardless of the geographic location of that Center. A State could exercise this option only once in any two-year period.

To exercise this option, a State must notify the Department in writing, not later than six months prior to the end of the fiscal year, that it wishes to affiliate with a different Regional Center noting the specific reasons for requesting reassignment. The Department will notify the current Regional Center immediately after receiving the request for reassignment. In order to allow time for the grantee to address quality-of-service issues and for the Department to evaluate whether reassignment is in the best interest of the program, the

Department will provide the State's current Regional Center a specified period of time to address the concerns articulated by the State before the Department considers the State request. The State must provide—

(1) Documentation from the proposed Regional Center with which it wants to affiliate that indicates the Center's willingness and capacity to serve the additional State; and

(2) Other pertinent information that the Department requests.

After considering the documentation and other information, the Department could approve a request if it is consistent with the requirements in section 203(a) of ETAA that (1) there be no fewer than 20 CCs and (2) at least one CC must be established in each of the 10 geographic regions served by the Regional Educational Laboratories established under section 941(h) of the Educational Research, Development, Dissemination, and Improvement Act of 1994. If the Department approves the request, the Department will re-designate regions served by each Regional Center to reflect any changes in regional membership. The Department will re-allocate the funding to each center, taking into account changes in the number of students served by each Regional Center and other such factors it deems appropriate. The Department will provide notification of any changes through a notice published in the **Federal Register**.

Application Requirements: Each application must contain a plan that includes the following:

All Centers:

(1) Present applicable State, regional, and local data demonstrating the current needs related to building capacity to implement and scale up evidence-based programs, practices, and interventions. Reference, as appropriate, information related to the Department's finalized monitoring and audit findings.

(2) Demonstrate expert knowledge of statutory requirements, regulations, and policies related to programs authorized under ESEA and current education issues and policy initiatives for supporting the implementation and scaling up of evidence-based programs, practices, and interventions.

(3) Consistent with the priorities and requirements for this program, demonstrate expertise and experience in the following areas:

(i) Managing budgets; selecting, coordinating, and overseeing multiple consultant and sub-contractor teams; and leading large-scale projects to deliver tools, training, and other services to governments, agencies, communities, businesses, schools, or other organizations.

(ii) Designing and implementing performance management processes with staff, subcontractors, and consultants that enable effective hiring, developing, supervising, and retaining a team of subject-matter experts and professional staff.

(iii) Identifying problems and conducting root-cause analysis; developing and implementing logic models, organizational assessments, strategic plans, and process improvements; and sustaining the use of evidence-based programs, practices, and interventions.

(iv) Monitoring and evaluating activities, including, but not limited to: Compiling data, conducting interviews, developing tools to enhance capacity-building approaches, conducting data analysis using statistical software, interpreting results from data using widely acceptable quantitative and qualitative methods, and developing evaluation reports.

(4) Describe the current research on adult learning principles, coaching, and implementation science that will inform the applicant's capacity-building services, including how the applicant will promote self-sufficiency and sustainability of State-led school improvement activities.

(5) Present a proposed communications plan for working with appropriate levels of the education system (*e.g.,* SEAs, REAs, LEAs, and/or schools) to ensure there is communication between each level and that there are processes in place to support, and continuously assess, the implementation of evidence-based programs, practices, and interventions. The applicant must describe how it will engage in meaningful consultation with a broad range of stakeholders (*e.g.,* principals, teachers, families, community members, etc.). The ideal applicant will propose effective strategies for receiving ongoing and timely input on the needs of its clients and the usefulness of its services and describe how it will continuously cultivate in-person relationships with clients, recipients, and partners that are knowledgeable of the identified needs for that region.

(6) Present a proposed evaluation plan for the project. The evaluation plan must describe the criteria for determining the extent to which: Milestones were met; outputs were met; recipient outcomes (short-term, mid-term, and long-term) were met; and capacity-building services proposed in State service plans were implemented as intended.

(7) Present a logic model informed by research or evaluation findings that demonstrates a rationale (as defined in this notice) explaining how the project is likely to improve or achieve relevant and expected outcomes. This logic model must align with the FY 2019 CC Logic Model, communicate how the project will achieve its expected outcomes (short-term, mid-term, and long-term) and provide a framework for both the formative and summative evaluations of the project consistent with the applicant's evaluation plan. Include a description of underlying concepts, assumptions, expectations, beliefs, and theories, as well as the relationships and linkages among these variables, and any empirical support for this framework.

(8) Include an assurance that, if awarded a grant, the applicant will assist the Department with the transfer of pertinent resources and products, and maintain the continuity of services to States during the transition to this new award period, as appropriate, including by working with the FY 2012 Comprehensive Center on Building State Capacity and Productivity to migrate products, resources, and other relevant project information to the National Center's Comprehensive Center network website.

Regional Centers:

In addition to meeting the Application Requirements for all Centers, a Regional Center applicant must—

(1) Describe the proposed approach to intensive capacity-building services, including identification of intended recipients and alignment of proposed capacity-building services to meet client needs. The applicant must also describe how it intends to measure the readiness of clients and recipients to work with the applicant; measure client and recipient capacity across the four capacity-building dimensions, including available resources; and measure the ability of the client and recipients to build capacity at the local level.

National Center:

In addition to meeting the application requirements for all Centers, a National Center applicant must—

(1) Demonstrate expertise and experience in leading digital engagement strategies to attract and sustain involvement of education stakeholders, including, but not limited to: Implementing a robust web and social media presence, overseeing customer relations management, providing editorial support, and collecting and analyzing web analytics.

(2) Describe the intended recipients of and the proposed approach to targeted

capacity-building services, including how the applicant intends to: Collaborate with Regional Centers to identify potential recipients and how many it has the capacity to reach; measure the readiness and capacity of potential recipients across the four dimensions of capacity-building services; and continuously engage potential recipients over the five-year period.

(3) Describe the intended recipients of and the proposed approach to universal capacity-building services, including how many recipients it plans to reach and how the applicant intends to: Measure the quality of the products and services developed to address common high-leverage problems; support recipients in the selection, implementation, and monitoring of evidence-based practices and interventions; and improve knowledge of emerging national education trends.

Definitions: For FY 2019 and any subsequent year in which we make awards from the list of unfunded applications from this competition, the following definitions apply. The definitions of ''capacity-building services,'' ''intensive capacity-building services,'' ''targeted capacity-building services,'' ''universal capacity-building services,'' ''human capacity,'' ''organizational capacity,'' ''policy capacity,'' ''resource capacity,'' ''high-leverage problems,'' ''milestone,'' ''outcomes,'' ''outputs,'' ''regional educational agency,'' and ''service plan project'' are from the NFP. The definitions of ''computer science,'' ''evidence-based,'' ''educational choice,'' ''high-poverty school,'' and ''rural local educational agency'' are from the Supplemental Priorities. The definitions of ''demonstrates a rationale,'' and ''relevant outcomes'' are from 34 CFR 77.1. The definition of ''novice applicant'' is from 34 CFR 75.225. The definitions of ''dual or concurrent enrollment program'' (section 8101(15)), ''early college high schools'' (section 8101(17)), and ''living in poverty'' (section 1113(a)(5)(A)) are from the ESEA. The definition of ''low income individual'' is from section 312(g) of the Higher Education Act of 1965, as amended.

These definitions are:

Capacity-building services means assistance that strengthens an individual's or organization's ability to engage in continuous improvement and achieve expected outcomes.

The four dimensions of capacity-building services are:

(1) *Human capacity* means development or improvement of individual knowledge, skills, technical expertise, and ability to adapt and be resilient to policy and leadership changes.

(2) *Organizational capacity* means structures that support clear communication and a shared understanding of an organization's visions and goals, and delineated individual roles and responsibilities in functional areas.

(3) *Policy capacity* means structures that support alignment, differentiation, or enactment of local, State, and Federal policies and initiatives.

(4) *Resource capacity* means tangible materials and assets that support alignment and use of Federal, State, private, and local funds.

The three tiers of capacity-building services are:

(1) *Intensive* means assistance often provided on-site and requiring a stable, ongoing relationship between the Regional Center and its clients and recipients, as well as periodic reflection, continuous feedback, and use of evidence-based improvement strategies. This category of capacity-building services should support increased recipient capacity in more than one capacity dimension and result in medium-term and long-term outcomes at one or more system levels.

(2) *Targeted* means assistance based on needs common to multiple clients and recipients and not extensively individualized. A relationship is established between the recipient(s), the National Center, and Regional Center(s) as appropriate. This category of capacity-building services includes one-time, labor-intensive events, such as facilitating strategic planning or hosting national or regional conferences. It can also include less labor-intensive events that extend over a period of time, such as facilitating a series of conference calls on single or multiple topics that are designed around the needs of the recipients. Facilitating communities of practice can also be considered targeted capacity-building services.

(3) *Universal* means assistance and information provided to independent users through their own initiative, involving minimal interaction with National Center staff and including one-time, invited or offered conference presentations by National Center staff. This category of capacity-building services also includes information or products, such as newsletters, guidebooks, policy briefs, or research syntheses, downloaded from the Center's website by independent users. Brief communications by National Center staff with recipients, either by telephone or email, are also considered universal services.

Computer science means the study of computers and algorithmic processes and includes the study of computing principles and theories, computational thinking, computer hardware, software design, coding, analytics, and computer applications.

Computer science often includes computer programming or coding as a tool to create software, including applications, games, websites, and tools to manage or manipulate data; or development and management of computer hardware and the other electronics related to sharing, securing, and using digital information.

In addition to coding, the expanding field of computer science emphasizes computational thinking and interdisciplinary problem-solving to equip students with the skills and abilities necessary to apply computation in our digital world.

Computer science does not include using a computer for everyday activities, such as browsing the internet; use of tools like word processing, spreadsheets, or presentation software; or using computers in the study and exploration of unrelated subjects.

Demonstrates a rationale means a key project component included in the project's logic model is informed by research or evaluation findings that suggest the project component is likely to improve relevant outcomes.

Dual or concurrent enrollment program means a program offered by a partnership between at least one institution of higher education (IHE) and at least one LEA through which a secondary school student who has not graduated from high school with a regular high school diploma is able to enroll in one or more postsecondary courses and earn postsecondary credit that—

(1) Is transferable to the IHEs in the partnership; and

(2) Applies toward completion of a degree or recognized educational credential as described in the Higher Education Act of 1965 (20 U.S.C. 1001 *et seq.*).

Early college high school means a partnership between at least one LEA and at least one IHE that allows participants to simultaneously complete requirements toward earning a regular high school diploma and earn not less than 12 credits that are transferable to the IHEs in the partnership as part of an organized course of study toward a postsecondary degree or credential at no cost to the participant or participant's family.

Educational choice means the opportunity for a child or student (or a family member on their behalf) to create

a high-quality personalized path for learning that is consistent with applicable Federal, State, and local laws; is in an educational setting that best meets the child's or student's needs; and, where possible, incorporates evidence-based activities, strategies, or interventions. Opportunities made available to a student through a grant program are those that supplement what is provided by a child's or student's geographically assigned school or the institution in which he or she is currently enrolled and may include one or more of the options listed below:

(1) Public educational programs or courses including those offered by traditional public schools, public charter schools, public magnet schools, public online education providers, or other public education providers.

(2) Private or home-based educational programs or courses including those offered by private schools, private online providers, private tutoring providers, community or faith-based organizations, or other private education providers.

(3) Internships, apprenticeships, or other programs offering access to learning in the workplace.

(4) Part-time coursework or career preparation, offered by a public or private provider in person or through the internet or another form of distance learning, that serves as a supplement to full-time enrollment at an educational institution, as a stand-alone program leading to a credential, or as a supplement to education received in a homeschool setting.

(5) Dual or concurrent enrollment programs (as defined in this notice) or early college high schools (as defined in this notice), or other programs that enable secondary school students to begin earning credit toward a postsecondary degree or credential prior to high school graduation.

(6) Access to services or programs for aspiring or current postsecondary students not offered by the institution in which they are currently enrolled to support retention and graduation.

(7) Other educational services including credit-recovery, accelerated learning, or tutoring.

Evidence-based means the proposed project component is supported by one or more of strong evidence, moderate evidence, promising evidence, or evidence that demonstrates a rationale.

Experimental study means a study that is designed to compare outcomes between two groups of individuals (such as students) that are otherwise equivalent except for their assignment to either a treatment group receiving a project component or a control group that does not. Randomized controlled trials, regression discontinuity design studies, and single-case design studies are the specific types of experimental studies that, depending on their design and implementation (*e.g.,* sample attrition in randomized controlled trials and regression discontinuity design studies), can meet What Works Clearinghouse (WWC) standards without reservations as described in the WWC Handbook:

(i) A randomized controlled trial employs random assignment of, for example, students, teachers, classrooms, or schools to receive the project component being evaluated (the treatment group) or not to receive the project component (the control group).

(ii) A regression discontinuity design study assigns the project component being evaluated using a measured variable (*e.g.,* assigning students reading below a cutoff score to tutoring or developmental education classes) and controls for that variable in the analysis of outcomes.

(iii) A single-case design study uses observations of a single case (*e.g.,* a student eligible for a behavioral intervention) over time in the absence and presence of a controlled treatment manipulation to determine whether the outcome is systematically related to the treatment.

High-leverage problems means problems that (1) if addressed could result in substantial improvements for many students or for key subgroups of students as defined in ESEA section 1111(c) and (d); (2) are priorities for education policymakers, particularly at the State level; and (3) require intensive capacity-building services to achieve outcomes that address the problem.

High-poverty school means a school in which at least 50 percent of students are from low-income families as determined using one of the measures of poverty specified under section 1113(a)(5) of the ESEA. For middle and high schools, eligibility may be calculated on the basis of comparable data from feeder schools. Eligibility as a high-poverty school under this definition is determined on the basis of the most currently available data.

Living in poverty means (1) except as provided in paragraph (2), an LEA shall use the same measure of poverty, which measure shall be the number of children aged 5 through 17 in poverty counted in the most recent census data approved by the Secretary, the number of children eligible for a free or reduced price lunch under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 *et seq.*), the number of children in families receiving assistance under the State program funded under part A of title IV of the Social Security Act, or the number of children eligible to receive medical assistance under the Medicaid Program, or a composite of such indicators, with respect to all school attendance areas in the LEA—

(i) To identify eligible school attendance areas;

(ii) To determine the ranking of each area; and

(iii) To determine allocations under paragraph (3).

(2) For measuring the number of students in low-income families in secondary schools, the LEA shall use the same measure of poverty, which shall be—

(i) The measure described under paragraph (1); or

(ii) Subject to meeting the conditions of paragraph (3), an accurate estimate of the number of students in low-income families in a secondary school that is calculated by applying the average percentage of students in low-income families of the elementary school attendance areas as calculated under paragraph (1) that feed into the secondary school to the number of students enrolled in such school.

(3) The LEA shall have the option to use the measure of poverty described in paragraph (2)(ii) after—

(i) Conducting outreach to secondary schools within such agency to inform such schools of the option to use such measure; and

(ii) A majority of such schools have approved the use of such measure.

Logic model (also referred to as a theory of action) means a framework that identifies key project components of the proposed project (*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes) and describes the theoretical and operational relationships among the key project components and relevant outcomes.

Low-income individual means an individual from a family whose taxable income for the preceding year did not exceed 150 percent of an amount equal to the poverty level determined by using criteria of poverty established by the Bureau of the Census.

Milestone means an activity that must be completed. Examples include: identifying key district administrators responsible for professional development, sharing key observations from needs assessment with district administrators and identified stakeholders, preparing a logic model, planning for State-wide professional development, identifying subject matter experts, and conducting train-the-trainer sessions.

Moderate evidence means that there is evidence of effectiveness of a key project component in improving a relevant outcome for a sample that overlaps with the populations or settings proposed to receive that component, based on a relevant finding from one of the following:

(i) A practice guide prepared by the WWC using version 2.1 or 3.0 of the WWC Handbook reporting a ''strong evidence base'' or ''moderate evidence base'' for the corresponding practice guide recommendation;

(ii) An intervention report prepared by the WWC using version 2.1 or 3.0 of the WWC Handbook reporting a ''positive effect'' or ''potentially positive effect'' on a relevant outcome based on a ''medium to large'' extent of evidence, with no reporting of a ''negative effect'' or ''potentially negative effect'' on a relevant outcome; or

(iii) A single experimental study or quasi-experimental design study reviewed and reported by the WWC using version 2.1 or 3.0 of the WWC Handbook, or otherwise assessed by the Department using version 3.0 of the WWC Handbook, as appropriate, and that—

(A) Meets WWC standards with or without reservations;

(B) Includes at least one statistically significant and positive (*i.e.,* favorable) effect on a relevant outcome;

(C) Includes no overriding statistically significant and negative effects on relevant outcomes reported in the study or in a corresponding WWC intervention report prepared under version 2.1 or 3.0 of the WWC Handbook; and

(D) Is based on a sample from more than one site (*e.g.,* State, county, city, school district, or postsecondary campus) and includes at least 350 students or other individuals across sites. Multiple studies of the same project component that each meet requirements in paragraphs (iii)(A), (B), and (C) of this definition may together satisfy this requirement.

Novice applicant means—

(a)(1) Any applicant for a grant from the Department that—

(i) Has never received a grant or subgrant under the program from which it seeks funding;

(ii) Has never been a member of a group application, submitted in accordance with 34 CFR 75.127–75.129, that received a grant under the program from which it seeks funding; and

(iii) Has not had an active discretionary grant from the Federal Government in the five years before the deadline date for applications under the program.

(2) In the case of a group application submitted in accordance with 34 CFR 75.127–75.129, a group that includes only parties that meet the requirements of this definition.

(b) For the purposes of paragraph (a)(1)(iii) of this definition, a grant is active until the end of the grant's project or funding period, including any extensions of those periods that extend the grantee's authority to obligate funds.

Outcomes means effects of receiving capacity-building services. Examples include: 95 percent of district administrators reported increased knowledge; two districts reported improved cross-agency coordination; and three districts reported identification of 2.0 FTE responsible for professional development.

(1) *Short-term outcomes* means effects of receiving capacity-building services after 1 year consistent with the FY 2019 CC Logic Model.

(2) *Medium-term outcomes* means effects of receiving capacity-building services after 2 to 3 years consistent with the FY 2019 CC Logic Model.

(3) *Long-term outcomes* means effects of receiving capacity-building services after 4 or more years consistent with the FY 2019 CC Logic Model.

Outputs means products and services that must be completed. Examples include: Needs assessment, logic model, training modules, evaluation plan, and 12 workshop presentations.

Note: A product output under this program would be considered a deliverable under the open licensing regulations at 2 CFR 3474.20.

Project component means an activity, strategy, intervention, process, product, practice, or policy included in a project. Evidence may pertain to an individual project component or to a combination of project components (*e.g.,* training teachers on instructional practices for English learners and follow-on coaching for these teachers).

Promising evidence means that there is evidence of the effectiveness of a key project component in improving a relevant outcome, based on a relevant finding from one of the following:

(i) A practice guide prepared by WWC reporting a ''strong evidence base'' or ''moderate evidence base'' for the corresponding practice guide recommendation;

(ii) An intervention report prepared by the WWC reporting a ''positive effect'' or ''potentially positive effect'' on a relevant outcome with no reporting of a ''negative effect'' or ''potentially negative effect'' on a relevant outcome; or

(iii) A single study assessed by the Department, as appropriate, that—

(A) Is an experimental study, a quasi-experimental design study, or a well-designed and well-implemented correlational study with statistical controls for selection bias (*e.g.,* a study using regression methods to account for differences between a treatment group and a comparison group); and

(B) Includes at least one statistically significant and positive (*i.e.,* favorable) effect on a relevant outcome.

Quasi-experimental design study means a study using a design that attempts to approximate an experimental study by identifying a comparison group that is similar to the treatment group in important respects. This type of study, depending on design and implementation (*e.g.,* establishment of baseline equivalence of the groups being compared), can meet WWC standards with reservations, but cannot meet WWC standards without reservations, as described in the WWC Handbook.

Regional educational agency, for the purposes of the Comprehensive Centers program, means ''Tribal Educational Agency'' as defined in ESEA section 6132(b)(3), as well as other educational agencies that serve regional areas.

Relevant outcome means the student outcome(s) or other outcome(s) the key project component is designed to improve, consistent with the specific goals of the program.

Rural local educational agency means an LEA that is eligible under the Small Rural School Achievement (SRSA) program or the Rural and Low-Income School (RLIS) program authorized under Title V, Part B of the ESEA. Eligible applicants may determine whether a particular district is eligible for these programs by referring to information on the Department's website at *www2.ed.gov/nclb/freedom/local/reap.html.*

Service plan project means a series of interconnected capacity-building services designed to achieve recipient outcomes and outputs. A service plan project includes, but is not limited to, a well-defined high-leverage problem, an approach to capacity-building services, intended recipients, key personnel, expected outcomes, expected outputs, and milestones.

Strong evidence means that there is evidence of the effectiveness of a key project component in improving a relevant outcome for a sample that overlaps with the populations and settings proposed to receive that component, based on a relevant finding from one of the following:

(i) A practice guide prepared by the WWC using version 2.1 or 3.0 of the WWC Handbook reporting a ''strong

evidence base'' for the corresponding practice guide recommendation;

(ii) An intervention report prepared by the WWC using version 2.1 or 3.0 of the WWC Handbook reporting a ''positive effect'' on a relevant outcome based on a ''medium to large'' extent of evidence, with no reporting of a ''negative effect'' or ''potentially negative effect'' on a relevant outcome; or

(iii) A single experimental study reviewed and reported by the WWC using version 2.1 or 3.0 of the WWC Handbook, or otherwise assessed by the Department using version 3.0 of the WWC Handbook, as appropriate, and that—

(A) Meets WWC standards without reservations;

(B) Includes at least one statistically significant and positive (*i.e.,* favorable) effect on a relevant outcome;

(C) Includes no overriding statistically significant and negative effects on relevant outcomes reported in the study or in a corresponding WWC intervention report prepared under version 2.1 or 3.0 of the WWC Handbook; and

(D) Is based on a sample from more than one site (*e.g.,* State, county, city, school district, or postsecondary campus) and includes at least 350 students or other individuals across sites. Multiple studies of the same project component that each meet requirements in paragraphs (iii)(A), (B), and (C) of this definition may together satisfy this requirement.

What Works Clearinghouse Handbook (WWC Handbook) means the standards and procedures set forth in the WWC Procedures and Standards Handbook, Version 3.0 or Version 2.1 (incorporated by reference, see 34 CFR 77.2). Study findings eligible for review under WWC standards can meet WWC standards without reservations, meet WWC standards with reservations, or not meet WWC standards. WWC practice guides and intervention reports include findings from systematic reviews of evidence as described in the Handbook documentation.

Program Authority: Section 203 of the Educational Technical Assistance Act of 2002 (ETAA) (20 U.S.C. 9601 *et seq.*).

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The regulations in 34 CFR part 299. (e) The NFP. (f) The Supplemental Priorities. (g) The notice of final priorities, requirements, and selection criteria-Comprehensive Centers Program, published in the **Federal Register** on June 6, 2012 (77 FR 33573).

Note: The regulations in 34 CFR part 86 apply to IHEs only.

II. Award Information

Type of Award: Cooperative agreement.

Estimated Available Funds: $50,000,000.

All of the 20 Centers proposed for funding under this competition will be supported entirely with funds from the CC program, authorized under the ETAA. The total amount of funds available for the CC program for FY 2019 is $52 million. Of that amount, an estimated $45 million will be used to fund Regional Centers and an estimated $5 million will be used to fund the National Center. FY 2019 funds will support awards for the first budget period of the project, which is the first 12 months of the project period. Funding for the subsequent budget periods of years two through five (FY 2020 through FY 2023) is contingent on appropriation levels.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in subsequent years from the list of unfunded applications from this competition.

Estimated Range of Awards: For Regional Centers: $1,000,000 to $6,472,657.

Region 01	$1,000,000.00
Region 02	2,360,643.00
Region 03	1,000,000.00
Region 04	2,557,246.00
Region 05	2,444,035.00
Region 06	3,215,377.00
Region 07	3,378,769.00
Region 08	3,212,089.00
Region 09	1,722,122.00
Region 10	1,302,938.00
Region 11	1,243,525.00
Region 12	1,963,421.00
Region 13 [1]	1,647,431.00
Region 14	5,413,470.00
Region 15	6,472,657.00
Region 16	3,316,771.00
Region 17	1,000,000.00
Region 18	1,000,000.00
Region 19	1,000,000.00

[1] Estimate includes $400,000 to support the Bureau of Indian Education.

For the National Center: $4,000,000 to $6,000,000.

National Center	$5,000,000.00

Estimated Number of Awards: 20. The Secretary intends to support 20 awards under this competition. Nineteen awards will support Regional Centers to serve States within defined geographic boundaries. One award will support the National Center.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* Research organizations, institutions, agencies, IHEs, or partnerships among such entities, or individuals, with the demonstrated ability or capacity to carry out the activities described in this notice, including regional entities that carried out activities under the Educational Research, Development, Dissemination, and Improvement Act of 1994 (as such Act existed on the day before November 5, 2002) and title XIII of the Elementary and Secondary Education Act of 1965 (as such title existed on the day before January 8, 2002). Letters of support do not meet the requirement for a consortium agreement.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

3. *Subgrantees:* A grantee under this competition may award subgrants to entities to directly carry out project activities described in its application.

4. *Administrative Direction and Control:* Administrative direction and control over grant funds must remain with the grantee.

5. *Limitation on Applications:* An application must respond to either Priority 1—Regional Centers or Priority 2—National Center.

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FR 3768) and available at *https://www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf,* which contain requirements and information on how to submit an application.

2. *Content and Form of Applications:* Requirements concerning the content of an application, together with the forms

you must submit, are in the application package for this program.

Recommended Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We encourage you to (1) limit the narrative to no more than 100 pages and (2) use the following standards:

- A ''page'' is 8.5″ × 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10.
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to the coversheet, budget information, resumes, assurances and certifications, or letters of support.

2. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 75.210. The maximum score for all selection criteria is 100 points. The points or weights assigned to each criterion are indicated in parentheses. Non-Federal peer reviewers will review each application and will evaluate and score each program narrative against the following selection criteria for each priority:

Priority One (Regional Centers) Selection Criteria:

(a) *Significance*

(1) The Secretary considers the significance of the proposed project.

(2) In determining the significance of the proposed project, the Secretary considers the likelihood that the proposed project will result in system change or improvement. (20 points)

(b) *Quality of the Project Design*

(1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which there is a conceptual framework underlying the proposed research or demonstration activities and the quality of that framework. (5 points)

(ii) The extent to which the proposed project will integrate with or build on similar or related efforts to improve relevant outcomes (as defined in this notice), using existing funding streams from other programs or policies supported by community, State, and Federal resources. (10 points)

(iii) The extent to which the services to be provided by the proposed project involve the collaboration of appropriate partners for maximizing the effectiveness of project services. (5 points)

(c) *Quality of Project Personnel*

(1) The Secretary considers the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factors:

(i) The qualifications, including relevant training and experience, of the project director or principal investigator. (20 points)

(ii) The qualifications, including relevant training and experience, of key project personnel. (20 points)

(d) *Quality of the Project Evaluation*

(1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project. (10 points)

(ii) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible. (10 points)

Priority Two (National Center) Selection Criteria:

(a) *Significance*

(1) The Secretary considers the significance of the proposed project.

(2) In determining the significance of the proposed project, the Secretary considers the following factors:

(i) The potential contribution of the proposed project to increased knowledge or understanding of educational problems, issues, or effective strategies. (10 points)

(ii) The extent to which the services to be provided by the proposed project reflect up-to-date knowledge from research and effective practice. (10 points)

(b) *Quality of Project Design*

(1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which there is a conceptual framework underlying the proposed research or demonstration activities and the quality of that framework. (5 points)

(ii) The extent to which the proposed project will integrate with or build on similar or related efforts to improve relevant outcomes (as defined in this notice), using existing funding streams from other programs or policies supported by community, State, and Federal resources. (10 points)

(iii) The extent to which the services to be provided by the proposed project involve the collaboration of appropriate partners for maximizing the effectiveness of project services. (5 points)

(c) *Quality of Project Personnel*

(1) The Secretary considers the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factors:

(i) The qualifications, including relevant training and experience, of the project director or principal investigator. (20 points)

(ii) The qualifications, including relevant training and experience, of key project personnel. (10 points)

(iii) The qualifications, including relevant training and experience, of project consultants or subcontractors. (10 points)

(d) *Quality of the Project Evaluation*

(1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project. (10 points)

(ii) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible. (10 points)

Geographic distribution: The ETAA (20 U.S.C. 9602(a)(2)(A)) requires that the Secretary must ensure that not less than one Comprehensive Center is established in each of the 10 geographic regions served by the Regional Educational Laboratories. The Secretary will consider the location of the proposed Regional Centers in the selection and negotiation of cooperative agreements to ensure that this requirement of the law is met.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.205, before awarding grants under this program the Department conducts a review of the risks posed by applicants. Under 2 CFR 3474.10, the Secretary may impose specific conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.205(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

Note: Consistent with 2 CFR 200.315(b) and other applicable law, the Department may make reports, deliverables, outputs, or materials produced by Comprehensive Centers publicly available. This may include the Comprehensive Centers disseminating reports, deliverables, outputs, or materials to a wide audience (*e.g.,* through their websites, social media, or other public-facing channels).

5. *Performance Measures:* Under the Government Performance and Results Act of 1993 (GPRA), the following measures will be used by the Department to evaluate the effectiveness of each Center, as well as the CC program as a whole:

Measure 1: The extent to which Comprehensive Center clients are satisfied with the quality, usefulness, and relevance of services provided.

Measure 2: The extent to which Comprehensive Centers provide services and products to a wide range of recipients.

Measure 3: The extent to which Comprehensive Centers demonstrate that capacity-building services were implemented as intended.

Measure 4: The extent to which Comprehensive Centers demonstrate recipient outcomes were met.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: Whether a grantee has made substantial progress in achieving

the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: April 1, 2019.

Frank Brogan,

Assistant Secretary of Elementary and Secondary Education.

[FR Doc. 2019–06582 Filed 4–3–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2019–ICCD–0036]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Applications for New Grants Under the Rehabilitation Services Administration (RSA) (1894–0001)

AGENCY: Office of Special Education and Rehabilitative Services (OSERS), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before May 6, 2019.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2019–ICCD–0036. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 550 12th Street SW, PCP, Room 9086, Washington, DC 20202–0023.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Kerrie Clark, 202–245–7281.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Applications for New Grants under the Rehabilitation Services Administration (RSA) (1894–0001).

OMB Control Number: 1820–0018.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 230.

Total Estimated Number of Annual Burden Hours: 9,200.

Abstract: The Rehabilitation Services Administration (RSA) is seeking approval to extend the current Information Collection package, OMB #1820–0018 (streamlined discretionary grants 1894–0001) in order to solicit applications for RSA's Discretionary Grant Awards authorized by the Rehabilitation Act of 1973, as amended and the Consolidated Appropriations Act, 2014 (Pub. L. 113–76) and the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113–235). The discretionary program areas include Rehabilitation Long-Term and Short-Term Training, Special Demonstration, Capacity Building, Interpreter Training, In-Service Training, Technical Assistance and Continuing Education (TACE) Centers, Service Programs, Disability Innovation Fund and other discretionary grant programs approved by the Secretary. The current application package expires July 31, 2019 and in order to provide application packages to applicants, RSA is requesting an extension of the currently approved package for an additional three years.

Dated: April 1, 2019.

Kate Mullan,

PRA Coordinator, Information Collection Clearance Program, Information Management Branch, Office of the Chief Information Officer.

[FR Doc. 2019–06608 Filed 4–3–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14958–000]

Oceanus Power & Water, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On December 27, 2018, Oceanus Power & Water, LLC, filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Integrated Pumped Hydroelectric Reverse Osmosis Clean Energy System at the Vandenberg Air Force Base (IPHROCES at Vandenberg AFB Project or project) to be located on coast of the Pacific Ocean, near Vandenberg Air Force, Santa Barbara County, California. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) A rock-fill dam (dimensions and position to be determined based energy and water storage volume requirements under the permit term, if issued); (2) a upper reservoir having a total storage capacity of 5,000 acre-feet at a normal maximum operating elevation of 1,310 feet mean sea level (msl); (3) two 12,450-foot-long, 11-foot-diameter penstocks running above ground between the upper reservoir and the powerhouse; (4) an underground powerhouse with approximate footprint of 0.4-acre and containing two variable speed reversible Francis reversible pump/turbine-motor/generator units rated for 75 megawatts each at 1,310 feet of gross head; (5) a 50-foot-high seawater reverse osmosis desalinization facility with an approximate footprint of 15-acres located approximately 325-feet from the powerhouse; (6) two 11-foot-diameter tailrace pipelines, each with six 35-foot-long, 11-foot-diameter Johnson screens, extending from the powerhouse to the intake/outlet structure; (7) a seawater intake/outlet structure located in the Pacific Ocean; (8) a brine concentrate storage lagoon to store brine concentrate during times when the project is inoperable or in pumping mode; (9) a 10-mile-long, transmission line extending from the project to the existing Divide Substation (the point of interconnection), the number of circuits, voltage, and configuration to be determined during the term of the permit, if issued; and (10) appurtenant facilities. The lower reservoir for the proposed project would be the Pacific Ocean. The estimated annual generation of the IPHROCES at Vandenberg AFB Project would be 415 gigawatt-hours.

Applicant Contact: Mr. Neal Aronson, Director, President/CEO, Oceanus Power & Water, LLC, 900 High Street, Palo Alto, California 94301; phone: (650) 380–3323.

FERC Contact: Kelly Wolcott; phone: (202) 502–6480.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–14958–000.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14958) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: March 29, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–06596 Filed 4–3–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC19–38–000.

Applicants: Northern States Power Company, a Minnesota corporation, Mankato Energy Center, LLC, Mankato Energy Center II, LLC.

Description: Supplement to December 18, 2018 Joint Application Authorization (Exhibit N) of Northern States Power Company, a Minnesota corporation, et al.

Filed Date: 3/29/19.

Accession Number: 20190329–5322.

Comments Due: 5 p.m. ET 4/12/19.

Docket Numbers: EC19–46–000.

Applicants: Orange and Rockland Utilities, Inc.

Description: Clarification and Revised Exhibits A and B to January 15, 2019 Application for order pursuant to Section 203 of the Federal Power Act of Orange and Rockland Utilities, Inc.

Filed Date: 3/28/19.

Accession Number: 20190328–5326.

Comments Due: 5 p.m. ET 4/11/19.

Docket Numbers: EC19–72–000.

Applicants: Northern States Power Company, a Minnesota corporation, Lake Benton Power Partners II, LLC.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act, et al. of Northern States Power Company, a Minnesota corporation, et al.

Filed Date: 3/28/19.

Accession Number: 20190328–5318.

Comments Due: 5 p.m. ET 4/18/19.

Docket Numbers: EC19–73–000.

Applicants: NGV Emerald Acquisition Co., LLC, Great Plains Windpark Legacy, LLC.

Description: Application for Authorization Under Section 203 of the Federal Power Act, et al. of NGV Emerald Acquisition Co., LLC, et al.

Filed Date: 3/28/19.

Accession Number: 20190328–5323.

Comments Due: 5 p.m. ET 4/18/19.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2422–006.

Applicants: Rocky Mountain Power, LLC.
Description: Notice of Non-Material Change in Status of Rocky Mountain Power, LLC.
Filed Date: 3/28/19.
Accession Number: 20190328–5286.
Comments Due: 5 p.m. ET 4/18/19.

Docket Numbers: ER16–2716–005.
Applicants: NextEra Energy Transmission MidAtlantic, LLC.
Description: Compliance filing: NextEra Energy Transmission MidAtlantic Revised Compliance Filing to be effective 11/30/2016.
Filed Date: 3/29/19.
Accession Number: 20190329–5362.
Comments Due: 5 p.m. ET 4/19/19.

Docket Numbers: ER16–2719–007.
Applicants: NextEra Energy Transmission New York, Inc.
Description: Compliance filing: NextEra Energy Transmission New York Revised Compliance Filing to be effective 11/30/2016.
Filed Date: 3/29/19.
Accession Number: 20190329–5363.
Comments Due: 5 p.m. ET 4/19/19.

Docket Numbers: ER19–1103–001.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Tariff Amendment: 2019–03–28_Amendment to Attachment X revisions for Hybrid Interconnection to be effective 3/28/2019.
Filed Date: 3/28/19.
Accession Number: 20190328–5259.
Comments Due: 5 p.m. ET 4/8/19.

Docket Numbers: ER19–1464–000.
Applicants: Sierra Pacific Power Company.
Description: § 205(d) Rate Filing: Service Agreement No. 18–00088 EPC SPPC/Fallon to be effective 3/29/2019.
Filed Date: 3/28/19.
Accession Number: 20190328–5253.
Comments Due: 5 p.m. ET 4/18/19.

Docket Numbers: ER19–1465–000.
Applicants: Sierra Pacific Power Company.
Description: § 205(d) Rate Filing: Service Agreement No. 18–00089 Amded NITSA SPPC/Fallon to be effective 5/28/2019.
Filed Date: 3/28/19.
Accession Number: 20190328–5254.
Comments Due: 5 p.m. ET 4/18/19.

Docket Numbers: ER19–1466–000.
Applicants: Pacific Gas and Electric Company.
Description: § 205(d) Rate Filing: PG&E Steelhead BESS SGIA (SA 416) to be effective 5/27/2019.
Filed Date: 3/28/19.
Accession Number: 20190328–5271.
Comments Due: 5 p.m. ET 4/18/19.

Docket Numbers: ER19–1467–000.
Applicants: Arizona Public Service Company.
Description: Tariff Cancellation: Cancellation of Service Agreement Nos. 308, 352, 357, and 358 to be effective 5/28/2019.
Filed Date: 3/28/19.
Accession Number: 20190328–5277.
Comments Due: 5 p.m. ET 4/18/19.

Docket Numbers: ER19–1468–000.
Applicants: Niagara Mohawk Power Corporation, New York Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 205 Cost Reimbursement Agreement (SA 2448) NMPC and NYPA to be effective 3/1/2019.
Filed Date: 3/29/19.
Accession Number: 20190329–5003.
Comments Due: 5 p.m. ET 4/19/19.

Docket Numbers: ER19–1469–000.
Applicants: New England Power Pool Participants Committee.
Description: § 205(d) Rate Filing: April 2019 Membership Filing to be effective 4/1/2019.
Filed Date: 3/29/19.
Accession Number: 20190329–5071.
Comments Due: 5 p.m. ET 4/19/19.

Docket Numbers: ER19–1470–000.
Applicants: ISO New England Inc., Emera Maine.
Description: § 205(d) Rate Filing: Emera Maine; Changes to ISO–NE OATT Schedule 21–EM to be effective 6/1/2019.
Filed Date: 3/29/19.
Accession Number: 20190329–5082.
Comments Due: 5 p.m. ET 4/19/19.

Docket Numbers: ER19–1471–000.
Applicants: Wisconsin Electric Power Company.
Description: § 205(d) Rate Filing: Update to Reactive Supply Service Revenue Requirement to be effective 4/1/2019.
Filed Date: 3/29/19.
Accession Number: 20190329–5087.
Comments Due: 5 p.m. ET 4/19/19.

Docket Numbers: ER19–1472–000.
Applicants: Wisconsin Electric Power Company.
Description: Notice of Cancellation of Rate Schedule No. 103 of Wisconsin Electric Power Company.
Filed Date: 3/28/19.
Accession Number: 20190328–5314.
Comments Due: 5 p.m. ET 4/18/19.

Docket Numbers: ER19–1473–000.
Applicants: AES Alamitos Energy, LLC.
Description: Baseline eTariff Filing: AES Alamitos Energy MBR Application to be effective 5/29/2019.
Filed Date: 3/29/19.
Accession Number: 20190329–5126.
Comments Due: 5 p.m. ET 4/19/19.

Docket Numbers: ER19–1474–000.
Applicants: AES Huntington Beach Energy, LLC.
Description: Baseline eTariff Filing: AES Huntington Beach Energy Application to be effective 5/29/2019.
Filed Date: 3/29/19.
Accession Number: 20190329–5143.
Comments Due: 5 p.m. ET 4/19/19.

Docket Numbers: ER19–1475–000.
Applicants: Potomac Electric Power Company, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: PEPCO submits revisions to OATT, Att. H–9A and H–9B re: True-up to be effective 6/1/2019.
Filed Date: 3/29/19.
Accession Number: 20190329–5170.
Comments Due: 5 p.m. ET 4/19/19.

Docket Numbers: ER19–1476–000.
Applicants: Duke Energy Progress, LLC.
Description: § 205(d) Rate Filing: DEP-Fayetteville PWC (RS No. 184) Amended PSCA to be effective 6/1/2019.
Filed Date: 3/29/19.
Accession Number: 20190329–5190.
Comments Due: 5 p.m. ET 4/19/19.

Docket Numbers: ER19–1477–000.
Applicants: Entergy Louisiana, LLC.
Description: § 205(d) Rate Filing: ELL–SRMPA 15th Extension of Interim Agreement to be effective 4/1/2019.
Filed Date: 3/29/19.
Accession Number: 20190329–5198.
Comments Due: 5 p.m. ET 4/19/19.

Docket Numbers: ER19–1478–000.
Applicants: Commonwealth Edison Company, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: ComEd submits revisions to OATT, Att. H–13A re: Superconductor Cable Project to be effective 5/28/2019.
Filed Date: 3/29/19.
Accession Number: 20190329–5200.
Comments Due: 5 p.m. ET 4/19/19.

Docket Numbers: ER19–1479–000.
Applicants: Trans-Allegheny Interstate Line Company, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: TrAILCo submits Transmission Facility Interconnection Agreement, SA No. 4239 to be effective 5/30/2019.
Filed Date: 3/29/19.
Accession Number: 20190329–5204.
Comments Due: 5 p.m. ET 4/19/19.

Docket Numbers: ER19–1480–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: 2019 TACBAA Update to be effective 6/1/2019.
Filed Date: 3/29/19.
Accession Number: 20190329–5211.
Comments Due: 5 p.m. ET 4/19/19.

Docket Numbers: ER19–1481–000.

Applicants: Trans-Allegheny Interstate Line Company, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: TrAILCo submits Transmission Facility Interconnection Agreement, SA No. 4368 to be effective 5/30/2019.

Filed Date: 3/29/19.

Accession Number: 20190329–5212.

Comments Due: 5 p.m. ET 4/19/19.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 29, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–06590 Filed 4–3–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER19–1461–000]

Greenlight Energy Inc.; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced Greenlight Energy Inc.'s application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is April 18, 2019.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 29, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–06592 Filed 4–3–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD10–12–010]

Increasing Market and Planning Efficiency and Enhancing Resilience Through Improved Software; Notice of Technical Conference: Increasing Real-Time and Day-Ahead Market Efficiency and Enhancing Resilience Through Improved Software

Take notice that Commission staff will convene a technical conference on June 25, 26, and 27, 2019 to discuss opportunities for increasing real-time and day-ahead market efficiency and enhancing the resilience of the bulk power system through improved software. A detailed agenda with the list of and times for the selected speakers will be published on the Commission's website [1] after May 13, 2019.

Staff has held similar conferences in this proceeding in the past few years, all focused on enhancing market efficiency. The Commission last year initiated a proceeding in Docket No. AD18–7 to explore bulk power system resilience issues and expanded the scope of the 2018 conference to include opportunities for enhancing resilience through improved software. As in past conferences, this conference will bring together experts from diverse backgrounds and experiences, including electric system operators, software developers, and those from government, research centers and academia for the purposes of stimulating discussion, sharing information, and identifying fruitful avenues for research concerning the technical aspects of improved software for increasing efficiency and resilience of the bulk power system.

This conference is intended to build on the discussions initiated in the previous Commission staff technical conferences on increasing market and planning efficiency and for enhancing resilience through improved software. A number of the topics that have been discussed during previous conferences have relevance to resilience in addition to market efficiency. Staff will be facilitating a discussion to explore research and operational advances with respect to market modeling that appear to have significant promise for potential efficiency improvements. Given the priority the Commission places on resilience, presentations that also discuss research and operational advances that could enhance resilience of the bulk power system are encouraged. Broadly, such topics fall into the following categories:

(1) Improvements to the representation of physical constraints that are either not currently modeled or currently modeled using mathematical approximations (*e.g.,* voltage and reactive power constraints, stability constraints, fuel delivery constraints, and constraints related to contingencies);

(2) Consideration of uncertainty to better maximize economic efficiency (expected market surplus) and better understand events that could impact resilience of the bulk power system, *e.g.,*

[1] *http://www.ferc.gov/industries/electric/indus-act/market-planning.asp.*

stochastic modeling or other improved modeling approaches to energy and reserve dispatch and system planning that efficiently manage uncertainty;

(3) Improvements to the ability to identify and use flexibility in the existing systems in ways that improve bulk power system resilience and economic efficiency, *e.g.,* optimal transmission switching, dynamic transmission ratings, transmission constraint relaxation practices, and ramp management;

(4) Improvements to the duality interpretations of the economic dispatch model, with the goal of enabling the calculation of prices which represent better equilibrium and incentives for efficient entry and exit;

(5) Limitations of current electricity market software due to its interaction with hardware, for example parallel computing and better cache management.

(6) Other improvements in algorithms, model formulations, or hardware that may allow for increases in market efficiency and enhanced bulk power system resilience.

Within these or related topics, we encourage presentations that discuss best modeling practices, existing modeling practices that need improvement, any advances made, or related perspectives on increasing market efficiency and resilience through improved power systems modeling.

The technical conference will be held at the Federal Energy Regulatory Commission headquarters, 888 First Street NE, Washington, DC 20426. All interested participants are invited to attend, and participants with ideas for relevant presentations are invited to nominate themselves to speak at the conference.

Speaker nominations must be submitted on or before April 19, 2019 through the Commission's website [2] by providing the proposed speaker's contact information along with a title, abstract, and list of contributing authors for the proposed presentation. Proposed presentations should be related to the topics discussed above. Speakers and presentations will be selected to ensure relevant topics and to accommodate time constraints.

Although registration is not required for general attendance by United States citizens, we encourage those planning to attend the conference to register through the Commission's website.[3] We will provide nametags for those who register on or before June 14, 2019.

We strongly encourage attendees who are not citizens of the United States to register for the conference by May 10, 2019, in order to avoid any delay associated with being processed by FERC security.

The Commission will accept comments following the conference, with a deadline of July 31, 2019.

There is an ''eSubscription'' link on the Commission's website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

A WebEx will be available. Off-site participants interested in listening via teleconference or listening and viewing the presentations through WebEx must register at *https://www.ferc.gov/whats-new/registration/real-market-6-26-18-form.asp,* and do so by 5:00 p.m. EST on June 14, 2019. WebEx and teleconferencing may not be available to those who do not register.

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an email to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or (202) 502–8659 (TTY), or send a fax to (202) 208–2106 with the required accommodations.

For further information about these conferences, please contact:

Sarah McKinley (Logistical Information), Office of External Affairs, (202) 502–8004, *Sarah.McKinley@ferc.gov*

Alexander Smith (Technical Information), Office of Energy Policy and Innovation, (202) 502–6601, *Alexander.Smith@ferc.gov*

Dated: March 29, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–06591 Filed 4–3–19; 8:45 am]

BILLING CODE 6717–01–P

[2] The speaker nomination form is located at *http://www.ferc.gov/whats-new/registration/real-market-6-24-19-speaker-form.asp.*

[3] The registration form is located at *https://www.ferc.gov/whats-new/registration/real-market-6-25-19-form.asp.*

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG19–87–000.
Applicants: AES Alamitos Energy, LLC.
Description: Self-Certification of EG of AES Alamitos Energy, LLC.
Filed Date: 3/29/19.
Accession Number: 20190329–5385.
Comments Due: 5 p.m. ET 4/19/19.

Docket Numbers: EG19–88–000.
Applicants: AES Huntington Beach Energy, LLC.
Description: Self-Certification of EG of AES Huntington Beach Energy, LLC.
Filed Date: 3/29/19.
Accession Number: 20190329–5386.
Comments Due: 5 p.m. ET 4/19/19.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER19–1482–000.
Applicants: PacifiCorp.
Description: Tariff Cancellation: Termination of SRP Construct Agmt for Cove Fort Meter to be effective 6/9/2019.
Filed Date: 3/29/19.
Accession Number: 20190329–5215.
Comments Due: 5 p.m. ET 4/19/19.

Docket Numbers: ER19–1483–000.
Applicants: Duke Energy Ohio, Inc., Duke Energy Kentucky, Inc., PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: DEOK submits revisions to OATT, Att. H–22A re: Depreciation Rates to be effective 1/1/2019.
Filed Date: 3/29/19.
Accession Number: 20190329–5217.
Comments Due: 5 p.m. ET 4/19/19.

Docket Numbers: ER19–1485–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: NIMECA Formula Rate to be effective 6/1/2019.
Filed Date: 3/29/19.
Accession Number: 20190329–5236.
Comments Due: 5 p.m. ET 4/19/19.

Docket Numbers: ER19–1486–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Rev. to Tariff, Reserve Market Enhancements—Req. 5/15/2019 Extended Comments to be effective 12/31/9998.
Filed Date: 3/29/19.
Accession Number: 20190329–5252.
Comments Due: 5 p.m. ET 5/15/19.

Docket Numbers: ER19–1487–000.
Applicants: Puget Sound Energy, Inc.
Description: § 205(d) Rate Filing: Powerex PTP SA 918 to be effective 4/1/2019.
Filed Date: 3/29/19.
Accession Number: 20190329–5317.
Comments Due: 5 p.m. ET 4/19/19.

Docket Numbers: ER19–1488–000.
Applicants: Southern Indiana Gas and Electric Company, Inc.

Description: Initial rate filing: Rate Schedule for Reactive Power Revenue Requirement to be effective 6/1/2019.

Filed Date: 3/29/19.

Accession Number: 20190329–5383.

Comments Due: 5 p.m. ET 4/19/19.

Docket Numbers: ER19–1489–000.

Applicants: Exelon Corporation.

Description: Petition for Limited Waiver, et al. of Exelon Corporation.

Filed Date: 3/29/19.

Accession Number: 20190329–5389.

Comments Due: 5 p.m. ET 4/19/19.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 29, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–06595 Filed 4–3–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP18–512–000; Docket No. CP18–513–000]

Corpus Christi Liquefaction Stage III, LLC, Corpus Christi Liquefaction, LLC, Cheniere Corpus Christi Pipeline, L.P.; Notice of Availability of The Environmental Assessment for The Proposed Stage 3 Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the Stage 3 Project, proposed by Corpus Christi Liquefaction Stage III, LLC, Corpus Christi Liquefaction, LLC, and Cheniere Corpus Christi Pipeline, L.P. (collectively, Cheniere) in the above-referenced dockets. Cheniere requests authorization to expand the liquefied natural gas (LNG) liquefaction and storage capacity of the previously approved Corpus Christi Liquefaction Project (Liquefaction Project) (Docket Nos. CP12–507–000 and CP12–508–000), as well as to construct and operate a new interstate natural gas pipeline and associated facilities in San Patricio County, Texas.

The EA assesses the potential environmental effects of the construction and operation of the Stage 3 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 U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, U.S. Department of Energy, U.S. Department of Transportation, U.S. Coast Guard, and U.S. Fish and Wildlife Service participated as cooperating agencies in the preparation of the EA. Cooperating agencies have jurisdiction by law or special expertise with respect to resources potentially affected by the proposal and participate in the NEPA analysis.

The proposed Stage 3 Project includes the following facilities in San Patricio County, Texas:

- Addition of seven mid-scale liquefaction trains capable of producing up to 11.45 million tons per annum of LNG;
- one new 160,000-cubic meter LNG storage tank;
- 21 miles of new 42-inch-diameter natural gas pipeline;
- addition of two natural gas compressor units at the existing Sinton Compressor Station; and
- appurtenant facilities including, meter and regulator stations, launcher and receiver facilities, and mainline valves.

The Commission mailed a copy of the *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.,* CP18–512). 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 April 29, 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 (CP18–512–000 and CP18–513–000) 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 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: March 29, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–06593 Filed 4–3–19; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2018–0655; FRL–9991–57–ORD]

Availability of the IRIS Assessment Plan for Methylmercury

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public comment period.

SUMMARY: The Environmental Protection Agency (EPA) is announcing a 30-day public comment period associated with release of the draft IRIS Assessment Plan for Methylmercury. This document communicates information on the scoping needs identified by EPA program and regional offices and the IRIS Program's initial problem formulation activities. Specifically, the assessment plan outlines the objectives for each assessment and the type of evidence considered most pertinent to address the scoping needs. EPA is releasing this draft IRIS Assessment Plan for a 30-day public comment period in advance of a public science webinar planned for May 15, 2019. The Agency encourages the public to comment on all aspects of the assessment plan, including key science issues.

DATES: The 30-day public comment period begins April 4, 2019 and ends May 6, 2019. Comments must be received on or before May 6, 2019.

ADDRESSES: The draft IRIS Assessment Plan for Methylmercury will be available via the internet on the IRIS website at *https://www.epa.gov/iris/iris-recent-additions* and in the public docket at *http://www.regulations.gov,* Docket ID No. EPA–HQ–ORD–2018–0655.

FOR FURTHER INFORMATION CONTACT: For information on the public comment period, contact the ORD Docket at the EPA Headquarters Docket Center; telephone: 202–566–1752; facsimile: 202–566–9744; or email: *Docket_ORD@epa.gov.*

For technical information on the draft IRIS Assessment Plan for Methylmercury, contact Dr. James Avery, NCEA; telephone: 202–564–1494; or email: *avery.james@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Information About IRIS Assessment Plans

EPA's IRIS Program is a human health assessment program that evaluates quantitative and qualitative information on the health effects that may result from exposure to chemicals found in the environment. Through the IRIS Program, EPA provides high quality science-based human health assessments to support the Agency's regulatory activities and decisions to protect public health. As part of scoping and initial problem formulation activities prior to the development of a draft assessment, the IRIS Program carries out a broad, preliminary literature survey to assist in identifying health effects that have been studied in relation to the chemical or substance of interest, as well as science issues that may need to be considered when evaluating toxicity. This information, in conjunction with scoping needs identified by EPA program and regional offices, is used to inform the development of an IRIS Assessment Plan (IAP).

The IAP communicates the plan for developing each individual chemical assessment to the public and includes summary information on the IRIS Program's scoping and initial problem formulation, objectives and specific aims for the assessment, and a PECO (Populations, Exposures, Comparators, and Outcomes) for the systematic review. The PECO provides the framework for developing detailed literature search strategies and inclusion/exclusion criteria, particularly with respect to evidence stream (*e.g.,* human, animal, mechanistic), exposure measures, and outcome measures. The IAP serves to inform the subsequent development of chemical-specific systematic review protocols, which will be made available for public review.

II. Public Webinar Information

To allow for public input, EPA is convening a public webinar to discuss the draft IRIS Assessment Plan for Methylmercury on May 15, 2019. Specific teleconference and webinar information regarding this public meeting will be provided through the IRIS website (*https://www.epa.gov/iris*) and via EPA's Human Health Risk Assessment (HHRA) and IRIS listservs. To register for the HHRA or IRIS listserv, visit the IRIS website (*https://www.epa.gov/iris*) or visit *https://www.epa.gov/iris/forms/staying-connected-integrated-risk-information-system#connect.*

III. How To Submit Technical Comments to the Docket at *http://www.regulations.gov*

Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2018–0655 for Methylmercury, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: Docket_ORD@epa.gov.*
- *Fax:* 202–566–9744.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center (ORD Docket), Mail Code: 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460. The phone number is 202–566–1752.
- *Hand Delivery:* The ORD Docket is located in the EPA Headquarters Docket Center, EPA West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004.

The EPA Docket Center 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. Deliveries are only accepted during the docket's normal hours of

operation, and special arrangements should be made for deliveries of boxed information. If you provide comments by mail or hand delivery, please submit three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2018–0655 for Methylmercury. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked ''late,'' and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at *www.regulations.gov,* including any personal information provided, unless a comment includes information claimed to be Confidential Business Information (CBI) or other information for which disclosure is restricted by statute. Do not submit information through *www.regulations.gov* or email that you consider to be CBI or otherwise protected. The *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 *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. 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. For additional information about EPA's public docket visit the EPA Docket Center homepage at *www.epa.gov/epahome/dockets.htm.*

Docket: Documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other materials, such as copyrighted material, are publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the ORD Docket in the EPA Headquarters Docket Center.

Dated: March 26, 2019.

Mary Ross,

Deputy Director, National Center for Environmental Assessment.

[FR Doc. 2019–06617 Filed 4–3–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2018–0409; FRL–9990–57]

Certain New Chemicals; Receipt and Status Information for October 2018

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is required under the Toxic Substances Control Act (TSCA), as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, to make information publicly available and to publish information in the **Federal Register** pertaining to submissions under TSCA Section 5, including notice of receipt of a Premanufacture notice (PMN), Significant New Use Notice (SNUN) or Microbial Commercial Activity Notice (MCAN), including an amended notice or test information; an exemption application (Biotech exemption); an application for a test marketing exemption (TME), both pending and/or concluded; a notice of commencement (NOC) of manufacture (including import) for new chemical substances; and a periodic status report on new chemical substances that are currently under EPA review or have recently concluded review. This document covers the period from 10/01/2018 to 10/31/2018.

DATES: Comments identified by the specific case number provided in this document must be received on or before May 6, 2019.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2018–0409, and the specific case number for the chemical substance related to your comment, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Jim Rahai, Information Management Division (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–8593; email address: *rahai.jim@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. What action is the Agency taking?

This document provides the receipt and status reports for the period from 10/01/2018 to 10/31/2018. The Agency is providing notice of receipt of PMNs, SNUNs and MCANs (including amended notices and test information); an exemption application under 40 CFR part 725 (Biotech exemption); TMEs, both pending and/or concluded; NOCs to manufacture a new chemical substance; and a periodic status report on new chemical substances that are currently under EPA review or have recently concluded review.

EPA is also providing information on its website about cases reviewed under the amended TSCA, including the section 5 PMN/SNUN/MCAN and exemption notices received, the date of receipt, the final EPA determination on the notice, and the effective date of EPA's determination for PMN/SNUN/MCAN notices on its website at: *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/status-pre-manufacture-notices.* This information is updated on a weekly basis.

B. What is the Agency's authority for taking this action?

Under the TSCA, 15 U.S.C. 2601 *et seq.,* a chemical substance may be either an ''existing'' chemical substance or a

''new'' chemical substance. Any chemical substance that is not on EPA's TSCA Inventory of Chemical Substances (TSCA Inventory) is classified as a ''new chemical substance,'' while a chemical substance that is listed on the TSCA Inventory is classified as an ''existing chemical substance.'' (See TSCA section 3(11).) For more information about the TSCA Inventory go to: *https://www.epa.gov/tsca-inventory.*

Any person who intends to manufacture (including import) a new chemical substance for a non-exempt commercial purpose, or to manufacture or process a chemical substance in a non-exempt manner for a use that EPA has determined is a significant new use, is required by TSCA section 5 to provide EPA with a PMN, MCAN or SNUN, as appropriate, before initiating the activity. EPA will review the notice, make a risk determination on the chemical substance or significant new use, and take appropriate action as described in TSCA section 5(a)(3).

TSCA section 5(h)(1) authorizes EPA to allow persons, upon application and under appropriate restrictions, to manufacture or process a new chemical substance, or a chemical substance subject to a significant new use rule (SNUR) issued under TSCA section 5(a)(2), for ''test marketing'' purposes, upon a showing that the manufacture, processing, distribution in commerce, use, and disposal of the chemical will not present an unreasonable risk of injury to health or the environment. This is referred to as a test marketing exemption, or TME. For more information about the requirements applicable to a new chemical go to: *http://www.epa.gov/oppt/newchems.*

Under TSCA sections 5 and 8 and EPA regulations, EPA is required to publish in the **Federal Register** certain information, including notice of receipt of a PMN/SNUN/MCAN (including amended notices and test information); an exemption application under 40 CFR part 725 (biotech exemption); an application for a TME, both pending and concluded; NOCs to manufacture a new chemical substance; and a periodic status report on the new chemical substances that are currently under EPA review or have recently concluded review.

C. Does this action apply to me?

This action provides information that is directed to the public in general.

D. Does this action have any incremental economic impacts or paperwork burdens?

No.

E. What should I consider as I prepare my comments for EPA?

1. *Submitting confidential business information (CBI).* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

II. Status Reports

In the past, EPA has published individual notices reflecting the status of TSCA section 5 filings received, pending or concluded. In 1995, the Agency modified its approach and streamlined the information published in the **Federal Register** after providing notice of such changes to the public and an opportunity to comment (See the **Federal Register** of May 12, 1995 (60 FR 25798) (FRL–4942–7). Since the passage of the Lautenberg amendments to TSCA in 2016, public interest in information on the status of section 5 cases under EPA review and, in particular, the final determination of such cases, has increased. In an effort to be responsive to the regulated community, the users of this information, and the general public, to comply with the requirements of TSCA, to conserve EPA resources and to streamline the process and make it more timely, EPA is providing information on its website about cases reviewed under the amended TSCA, including the section 5 PMN/SNUN/MCAN and exemption notices received, the date of receipt, the final EPA determination on the notice, and the effective date of EPA's determination for PMN/SNUN/MCAN notices on its website at: *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/status-pre-manufacture-notices.* This information is updated on a weekly basis.

III. Receipt Reports

For the PMN/SNUN/MCANs received by EPA during this period, Table I provides the following information (to the extent that such information is not subject to a CBI claim) on the notices received by EPA during this period: The EPA case number assigned to the notice that indicates whether the submission is an initial submission, or an amendment, a notation of which version was received, the date the notice was received by EPA, the submitting manufacturer (*i.e.,* domestic producer or importer), the potential uses identified by the manufacturer in the notice, and the chemical substance identity.

As used in each of the tables in this unit, (S) indicates that the information in the table is the specific information provided by the submitter, and (G) indicates that this information in the table is generic information because the specific information provided by the submitter was claimed as CBI. Submissions which are initial submissions will not have a letter following the case number. Submissions which are amendments to previous submissions will have a case number followed by the letter ''A'' (*e.g.,* P–18–1234A). The version column designates submissions in sequence as ''1'', ''2'', ''3'', etc. Note that in some cases, an initial submission is not numbered as version 1; this is because earlier version(s) were rejected as incomplete or invalid submissions. Note also that future versions of the following tables may adjust slightly as the Agency works to automate population of the data in the tables.

TABLE I—PMN/SNUN/MCANS RECEIVED FROM 10/01/2018 TO 10/31/2018

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
J–19–0001	2	10/5/2018	Xyleco	(S) Used to produce enzymes which will be used to saccharify agricultural waste to simple sugars.	(S) Trichoderma reesei 3AX3-9.
J–19–0002	1	10/5/2018	CBI	(G) Used for the manufacture of a chemical.	(G) Genetically modified microorganism.

TABLE I—PMN/SNUN/MCANS RECEIVED FROM 10/01/2018 TO 10/31/2018—Continued

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
J–19–0003	1	10/5/2018	CBI	(G) Used for the manufacture of a chemical.	(G) Genetically modified microorganism.
J–19–0004	1	10/5/2018	CBI	(G) Used for the manufacture of a chemical.	(G) Genetically modified microorganism.
P–18–0235A	5	10/3/2018	CBI	(S) Component in automotive gasoline/transportation fuel for consumer use.	(G) Naphtha Oils.
P–18–0309	7	10/19/2018	Highland Logistics, LLC.	(G) Latex applied to textiles for anti-odor and anti-microbial applications.	(G) alkanedioic acid, 2-alkylene-, polymer with polyhaloaromatic arylate, sodium salt, hydroxyalkyl alkanoate, alkanoic acid, alkenyl-hydroxypoly(oxy-1,2-ethanediyl-alkenyloxymethylalkyoxy polyoxy-1,2-ethandiyl.
P–18–0341	2	10/11/2018	CBI	(G) Component in coatings	(G) Alkane dicarboxylic acid, polymer with alkoxylated polyalcohol, alkyl polyglycol, alkyl dialcohol, and functionalized carboxylic acid.
P–18–0342	2	10/11/2018	CBI	(G) Component in coatings	(G) Alkane dicarboxylic acid, polymer with alkyl polyglycol, alkyl dialcohol, and functionalized carboxylic acid.
P–18–0343	2	10/11/2018	CBI	(G) Component in coatings	(G) Alkane dicarboxylic acid, polymer with alkoxylated polyalcohol, and alkyl dialcohol, (hydroxy alkyl) ester.
P–18–0344	2	10/11/2018	CBI	(G) Component in coatings	(G) Aromatic dicarboxylic acid, polymer with alkane dicarboxylic acid, alkoxylated polyalcohol, and alkyl dialcohol.
P–18–0365	3	10/30/2018	CBI	(G) Superabsorbent polymer; (S) Manufacture for export only.	(G) Starch, carboxymethyl ether, sodium salt, polymer with polycarboxylic acid.
P–18–0366	3	10/30/2018	CBI	(G) Superabsorbent polymer; (S) Manufacture for export only.	(G) Starch, carboxymethyl ether, sodium salt, polymer with mixed polycarboxylic acids.
P–18–0368	2	10/15/2018	CBI	(G) Surfactant; (G) Protectant	(G) Polyfluoroalkanesulfonamido-(hydroxyethyl)-, phosphate ester compounds, amine salts.
P–18–0372	2	10/10/2018	Hexion Inc	(G) Polyol; (S) Reactive modifier for Carbon; (S) Reactive modifier for Fiber bonding; (S) Reactive modifier for Friction; (S) Reactive modifier for Coated abrasives; (S) Reactive modifier for Glass Inserts; (S) Reactive Modifier for Refractory; (S) Reactive modifier for Bonded abrasives; (S) Reactive polyol for Sealants; (S) Reactive polyol for Adhesives; (S) Reactive polyol for 1 part coatings; (S) Reactive polyol for 2 part coatings; (S) Reactive polyol for composites; (G) Polyol.	(G) Formaldehyde, polymer with phenol and heteroatom-substituted heteromonocycle, reaction products with 1,3-dioxolan-2-one and 4-methyl-1,3-dioxolan-2-one.
P–18–0373	2	10/10/2018	Hexion Inc	(G) Polyol; (S) Reactive modifier for carbon; (S) Reactive modifier for friction; (S) Reactive modifier for fiber bonding; (S) Reactive modifier for coated abrasives; (S) Reactive modifier for glass inserts; (S) Reactive modifier for refractory; (S) Reactive modifier for bonded abrasives; (S) Reactive polyol for sealants; (S) Reactive polyol for adhesives; (S) Reactive polyol for 1-part coatings; (S) Reactive polyol for 2-part coatings; (S) Reactive polyol for composites; (G) Polyol.	(G) Formaldehyde, polymer with 2-methyloxirane, oxirane, phenol and heteroatom-substituted heteromonocycle.
P–18–0374	3	10/18/2018	Evonik Corporation	(S) Additive in a water-borne coating formulation; (S) Glass fiber sizing; (S) Fillers, pigments and glass bead treatment.	(G) Cationic aminomodified alkylpolysiloxane.
P–18–0375	3	10/10/2018	Pulcra Chemicals, LLC.	(S) The PMN substance will be imported as part of an aqueous emulsion containing about 10 to 25 percent PMN substance with lubricant oils, nonionic surfactants and anionic surfactants. The emulsion will be used in the fat liquoring stage in the production of leather.	(S) Fats and Glyceridic oils, vegetable, sulfonated, sodium salts.
P–18–0376	1	10/10/2018	Sumitomo Chemical Advanced Technologies, LLC.	(S) Substance used to improve physical properties in rubber products.	(G) Thiosulfuric acid, aminoalkyl ester.
P–18–0378	2	10/4/2018	CBI	(G) Industrial coatings additive	(G) Acrylic and Methacrylic acids and esters, polymer with alkenylimidazole, alkyl polyalkylene glycol, alkenylbenzene, alkylbenzeneperoxoic acid ester initiated, compds. with Dialkylaminoalkanol.
P–18–0380	3	10/12/2018	CBI	(G) Automotive brake parts (contained use)	(G) Butanoic acid ethyl amine.
P–18–0392	4	10/15/2018	CBI	(G) Intermediate chemical	(G) Heteromonocycle, alkenyl alkyl.

TABLE I—PMN/SNUN/MCANS RECEIVED FROM 10/01/2018 TO 10/31/2018—Continued

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
P–18–0404	2	10/19/2018	Gurit (USA), Inc	(S) The substance is part of a mixture with other amines to act as a curative for a 2-part epoxy formulation. The intended use is the manufacture of wind turbine blades. During manufacture of the blades this substance forms part of the in-mold coating system which is applied to the blade mold and further laminated with glass (or carbon) reinforced fibres (GRP). The manufactured structure is then 'cured' using heat and a chemical reaction occurs forming a solid composite structure.	(G) alkylmultiheteroatom,2-functionalisedalkyl-2-hydroxyalkyl-, polymer with alkylheteroatom-multialkylfunctionalised carbomonocyleheteroatom and multiglycidylether difunctionalised polyalkylene glycol.
P–18–0404A	3	10/30/2018	Gurit (USA), Inc	(S) The substance is part of a mixture with other amines to act as a curative for a 2-part epoxy formulation. The intended use is the manufacture of wind turbine blades. During manufacture of the blades this substance forms part of the in-mold coating system which is applied to the blade mold and further laminated with glass (or carbon) reinforced fibres (GRP). The manufactured structure is then 'cured' using heat and a chemical reaction occurs forming a solid composite structure.	(G) alkylmultiheteroatom,2-functionalisedalkyl-2-hydroxyalkyl-, polymer with alkylheteroatom-multialkylfunctionalised carbomonocyleheteroatom and multiglycidylether difunctionalised polyalkylene glycol.
P–19–0001	2	10/1/2018	Burgess Pigment Company.	(G) Filler for plastic	(G) Aluminum silicate clay treated with siloxane (vinyl functionality).
P–19–0002	3	10/10/2018	CBI	(S) Chemical Intermediate	(G) Polyaromatic symmetrical tetracarboxylic acid.
P–19–0003	2	10/19/2018	Sabic Innovative Plastics US, LLC.	(S) Chemical Intermediate	(G) Polyaromatic ether symmetrical dicarboxylic anhydride.
P–19–0004	2	10/19/2018	Sabic Innovative Plastics US, LLC.	(G) Molded parts and components	(G) Aromatic dianhydride, polymer with aromatic diamine and heteroatom bridged aromatic diamine, reaction products with aromatic anhydride.
P–19–0005	1	10/2/2018	CBI	(S) Adhesive for automotive parts	(G) Phenol-formaldehyde epoxy, polymer with an alkyl polyether polysulfide.
P–19–0006	1	10/9/2018	CBI	(G) Open, non-dispersive use	(G) Diisocyanate polymer blocked with alkoxyamine.
P–19–0007	1	10/16/2018	Allnex USA, Inc	(S) Coating resin binder	(G) Alkenoic acid, alkyl-, hydroxyalkyl ester, polymer with alkyl-alkenoate, alkenylcarbomonocycle, hydroxyalkyl-alkenoate, alkyl substituted alkenoate, heteromonocycle and alkenoic acid, alkylperoxoate-initiated.
P–19–0007A	2	10/25/2018	Allnex USA, Inc	(S) Coating resin binder	(G) Alkenoic acid, alkyl-, hydroxyalkyl ester, polymer with alkyl-alkenoate, alkenylcarbomonocycle, hydroxyalkyl-alkenoate, alkyl substituted alkenoate, heteromonocycle and alkenoic acid, alkylperoxoate-initiated.
P–19–0008	1	10/22/2018	Allnex USA, Inc	(S) The PMN substance is an isolated intermediate incorporated as a component in several allnex coating resin products used as additives for corrosion protection.	(G) Substitued polyalkylenepolycarbomonocycle ester, polymer with dialkanolamine, (hydroxyalkoxy)carbonyl] derivs., (alkoxyalkoxy) alkanol-blocked.
P–19–0009	1	10/23/2018	Allnex USA, Inc	(S) The PMN substance is used as a coating resin additive for corrosion protection.	(G) Carbonmonocycles, polymer with haloalkyl substituted heteromonocycle and hydro-hydroxypoly[oxy(alkyl-alkanediyl)], dialkyl-alkanediamine-terminated, hydroxyalkylated, acetates (salts).
P–19–0010	1	10/29/2018	Ashland, Inc	(G) Adhesive	(G) Hydrogenated fatty acid dimers, polymers with 1,1′-methylenebis[4-isocyanatobenzene], polypropylene glycol, polypropylene glycol ether with trimethylolpropane (3:1), and 1,3-propanediol, propylene glycol monomethacrylate-blocked.

TABLE I—PMN/SNUN/MCANS RECEIVED FROM 10/01/2018 TO 10/31/2018—Continued

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
SN–18–0016	2	10/10/2018	Hexion Inc	(S) Reactive modifier for glass inserts; (S) Reactive modifier for refractory; (S) Reactive modifier for bonded abrasives; (S) Reactive polyol for sealants; (S) Reactive polyol for adhesives; (S) Reactive polyol for 1 part coatings; (S) Reactive polyol for 2 part coatings; (S) Reactive polyol for composites; (G) Reactive polymer; (G) Reactive polymer; (S) Reactive modifier for carbon (powder EPF); (S) Reactive modifier for carbon (liquid EPF); (S) Reactive modifier for fiber bonding; (S) Reactive modifier for friction; (S) Reactive modifier for coated abrasives.	(G) Modified phenol-formaldehyde resin.

In Table II. of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the NOCs received by EPA during this period: The EPA case number assigned to the NOC including whether the submission was an initial or amended submission, the date the NOC was received by EPA, the date of commencement provided by the submitter in the NOC, a notation of the type of amendment (*e.g.,* amendment to generic name, specific name, technical contact information, etc.) and chemical substance identity.

TABLE II—NOCS RECEIVED FROM 10/01/2018 TO 10/31/2018

Case No.	Received date	Commencement date	If amendment, type of amendment	Chemical substance
J–18–0006	10/24/2018	09/25/2018		(G) Biofuel-producing modified microorganism(s), with chromosomally-borne modifications.
J–18–0008	10/15/2018	09/12/2018		(G) Biofuel-producing modified microorganism(s), with chromosomally-borne modifications.
P–11–0432A	10/02/2018	09/10/2018	The chemical name and CASRN submitted were not in agreement with the original PMN submission (P–110432).	(S) Tricyclo[7.3.3.15,11]heptasiloxane-3,7,14-triol, 1,3,5,7,9,11,14-heptakis(2,4,4-trimethylpentyl)-.
P–13–0071	10/29/2018	10/01/2018		(G) Fatty acid amide chlorides.
P–14–0092	10/29/2018	10/01/2018		(G) Fatty acid amide chloride.
P–15–0353	10/05/2018	09/27/2018		(S) Fatty acids, c16 and c18-unsaturated, methyl esters, chlorinated.
P–15–0437	10/16/2018	10/12/2018		(G) Flexible polyurethane methacrylate resin.
P–16–0207	10/18/2018	09/12/2018		(G) Spiro tetrafluoroborate.
P–16–0483	10/23/2018	10/17/2018		(G) Inorganic acids, metal salts, cmpds with modified hetereoaromatic casrn.
P–17–0007A	10/08/2018	09/20/2018	Updated generic name.	(G) Dialkyl 7,10-dioxa, dithiahexadeca diene.
P–17–0207	10/04/2018	09/17/2018		(G) 2-alkenoic acid, 2-alkyl-, 2-alkyl ester, polymer with alkyl 2-alkenoate, vinyl carbomonocyle, substituted alkyl 2-alkyl-2-alkenoate and alkyl 2-alkyl-2-alkenoate, tertiary alkyl peroxide-initiated.
P–17–0329	10/30/2018	10/26/2018		(S) Ethanone, 1-[4-(4-chlorophenoxy)-2-(trifluoromethyl)phenyl]-.
P–17–0334	10/04/2018	09/28/2018		(S) Benzamide, 2-(trifluoromethyl)-.
P–18–0040	10/11/2018	10/10/2018		(G) Alkanedioic acid, polymers with alkanoic acid-dipentaerythritol reaction products, substituted alkanedioc acid, substituted alkanoic acid, isocyanato-(isocyanatoalkyl)-alkyl substituted carbomoncycle and alkyl substituted alkanediol.
P–18–0042	10/09/2018	10/05/2018		(S) 2,5-furandione, polymer with 2-ethyl-2-(hydroxymethyl)-1,3-propanediol, 3a,4,5,6,7,7a-hexahydro-4,7-methano-1h-inden-5(or 6)-yl ester, ester with 2,3-dihydroxypropyl neodecanoate, polymer with 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane, 2-hydroxyethyl acrylate- and 2-hydroxyethyl methacrylate-blocked.
P–18–0100	10/11/2018	10/09/2018		(G) Substituted alkanoic acid, polymer with alkylcarbonate, alkanediols and isocyanate substituted carbomonocycles, sodium salt, alkenoic acid substituted polyol reaction products-blocked.

In Table III. of this unit, EPA provides the following information (to the extent such information is not subject to a CBI claim) on the test information received by EPA during this time period: The EPA case number assigned to the test information; the date the test information was received by EPA, the type of test information submitted, and chemical substance identity.

TABLE III—TEST INFORMATION RECEIVED FROM 10/01/2018 TO 10/31/2018

Case No.	Received date	Type of test information	Chemical substance
P–87–1436	10/3/2018	QSAR Assessment Report on Vinyl Laurate; Skin Sensitization: Local Lymph Node Assay (OECD TG 429); Repeated Dose 90-Day Oral Toxicity in Rodents (OECD TG 408); Repeated Dose Toxicity and Repro/Devel Toxicity Screening (OECD TG 422); Chromosome Aberration Test (OECD TG 473); Gene Mutation Assay (OECD TG 476); Micronucleus Test (OECD TG 474); Prenatal Developmental Toxicity Study (OECD TG 414); Aquatic Toxicity—Daphnia (OECD TG 202); Aquatic Toxicity—Daphnia Reproductive (OECD TG 211); Aquatic Toxicity—Algal Growth (OECD TG 201); Ready Biodegradability (OECD TG 301); Dermal Irritation/Corrosion (OECD TG 404); Bacterial Reverse Mutation Assay—Ames Test (OECD 471); Fish Acute Toxicity (OECD TG 203); Activated Sludge Test (OECD TG 209); Acute Oral Toxicity (OECD TG 401); Acute Eye Irritation (OECD TG 405); Acute Dermal Toxicity (OECD TG 402), Site WWT Discharge Permit, Flow Chart of the existing Calvert City Waste Water process system.	(S) Dodecanoic acid, ethenyl ester.
P–18–0300	10/8/2018	Activated Sludge (ISO 18749), Acute Oral Toxicity (OECD 423), AMES Test (OECD 471), Skin Sensitization-Buehler Test (OECD 406), Ready Biodegradability (OECD 301A).	(G) Heteromonocycle, alkenoic 1:1 salt, polymer with alpha-(2-methyl-1-oxo-2-propen-1-y)l-omegamethoxypoly(oxy-1,2-ethanediyl) and ethylalkenoic acid.
P–18–0051	10/11/2018	Hydrolysis as a Function of pH	(G) Alkenoic acid, reaction products with [Oxybis(alkylene)]bis[(substituted alkyl)-alkanediol], polymers with isocyanatoalkane and substituted alkanoic acid, substituted monoacrylate alkanoate-blocked.
P–18–0126	10/12/2018	Activated Sludge, Respiration Inhibition Test (Carbon and Ammonium Oxidation) (OECD 209), Algae Growth Inhibition Study in Pseudokirchneriella subcapitata (OECD 201), 48-hour Acute Immobilization Study in Daphnia magna (OECD 202).	(S) Calcium manganese titanium oxide.
SN–18–0013	10/15/2018	Particle Size Distribution	(G) Lithiated metal oxide.
P–18–0270–0271.	10/18/2018	Algae Acute Toxicity (OCSPP 850.5400), Daphnia Acute Toxicity (OCSPP 850.1010, Fish Acute Toxicity (OCSPP 850.1075), Algae Acute Toxicity (OCSPP 850.5400), Daphnia Acute Toxicity (OCSPP 850.1010), Fish Acute Toxicity (OCSPP 850.1075).	(G) Ethanol, 2-butoxy-, 1,1′-ester (G) 2-Propanol, 1-butoxy-, 2,2′-ester.
P–15–0054	10/24/2018	Physical Chemistry Data (Year 3 Reporting): • TEM, SEM, AFM Raman • XPS ICP ESD • XRD Zeta Potential	(S) Carbon Nanotube.
P–16–0543	10/24/2018	Exposure Monitoring Report (September 27)	(G) halogenophosphoric acid metal salt.
P–18–0309	10/26/2018	Skin Irritation (OECD 404)	(G) alkanedioic acid, 2-alkylene-, polymer with polyhaloaromatic arylate, sodium salt, hydroxyalkyl alkanoate, alkanoic acid, alkenyl-hydroxypoly(oxy-1,2-ethanediyl-alkenyloxymethylalkyoxy polyoxy-1,2-ethandiyl.
P–17–0187	10/26/2018	Skin Irritation (OECD 404)	(G) Polymer with benzoic acid tetra halogen hydroxy tetrahalogen oxo H xanthenyl alkenylaryl alkyl ester alkalai metal salt, butyl-2-propenoate, ethenyl neodecanoate, methyl-2-methyl-2-propenoate and 2-methyl-2-propenoic acid.

If you are interested in information that is not included in these tables, you may contact EPA's technical information contact or general information contact as described under **FOR FURTHER INFORMATION CONTACT** to access additional non-CBI information that may be available.

Authority: 15 U.S.C. 2601 *et seq.*

Dated: March 19, 2019.

Pamela Myrick,

Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2019–06557 Filed 4–3–19; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

TIME AND DATE: Tuesday, April 9, 2019 at 10:00 a.m. and its continuation at the conclusion of the open meeting on April 11, 2019.

PLACE: 1050 First Street NE, Washington, DC.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Compliance matters pursuant to 52 U.S.C. 30109.

Matters relating to internal personnel decisions, or internal rules and practices.

Matters concerning participation in civil actions or proceedings or arbitration.

* * * * *

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Laura E. Sinram,

Deputy Secretary of the Commission.

[FR Doc. 2019–06779 Filed 4–2–19; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Notice

April 2, 2019.

TIME AND DATE: 10:00 a.m., Thursday, April 18, 2019.

PLACE: The Richard V. Backley Hearing Room, Room 511N, 1331 Pennsylvania Avenue NW, Washington, DC 20004 (enter from F Street entrance).

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following in open session: *Secretary of Labor* v. *M-Class Mining, LLC,* Docket No. LAKE 2012–519. (Issues include whether the Judge erred by ruling that a miner was not required to wear gloves while troubleshooting an energized continuous mining machine.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFO: Emogene Johnson (202) 434–9935/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

PHONE NUMBER FOR LISTENING TO MEETING: 1 (866) 867–4769. Passcode: 678–100.

Sarah L. Stewart,

Deputy General Counsel.

[FR Doc. 2019–06787 Filed 4–2–19; 4:15 pm]

BILLING CODE 6735–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (''Act'') (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 19, 2019.

A. *Federal Reserve Bank of Dallas* (Robert L. Triplett III, Senior Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Lone Star State Bancshares, Inc. and Subsidiaries Employee Stock Ownership Plan, Lubbock, Texas, Kirk Thomas and Melisa Roberts as trustees, both of Lubbock, Texas, and Brent Beakley, also as trustee, of Odessa, Texas;* to acquire voting shares of Lone Star State Bancshares, Inc., and indirectly acquire Lone Star State Bank of West Texas, both of Lubbock, Texas.

Board of Governors of the Federal Reserve System, April 1, 2019.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2019–06587 Filed 4–3–19; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Savings and Loan Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Home Owners' Loan Act (12 U.S.C. 1461 *et seq.*) (HOLA), Regulation LL (12 CFR part 238), and Regulation MM (12 CFR part 239), and all other applicable statutes and regulations to become a savings and loan holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a savings association and nonbanking companies owned by the savings and loan holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the HOLA (12 U.S.C. 1467a(e)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 10(c)(4)(B) of the HOLA (12 U.S.C. 1467a(c)(4)(B)). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 29, 2019.

A. *Federal Reserve Bank of Kansas City* (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Colorado Mutual Holding Company, Alamosa, Colorado, and Colorado Mutual Bancorp, Alamosa, Colorado*; to become savings and loan holding companies, by acquiring 100 percent of San Luis Valley Federal Bank, Alamosa, Colorado (Federal Bank), in connection with the conversion of Federal Bank from a federal mutual savings association.

Board of Governors of the Federal Reserve System, April 1, 2019.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2019–06586 Filed 4–3–19; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Government in the Sunshine Meeting Notice; Agency Holding the Meeting: Board of Governors of the Federal Reserve System

TIME AND DATE: 10:00 a.m. on Monday, April 8, 2019.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th Street entrance between Constitution Avenue and C Streets NW, Washington, DC 20551.

STATUS: Open.

On the day of the meeting, you will be able to view the meeting via webcast from a link available on the Board's public website. *You do not need to register to view the webcast of the meeting.* A link to the meeting documentation will also be available approximately 20 minutes before the start of the meeting. Both links may be accessed from the Board's public website at *www.federalreserve.gov.*

If you plan to attend the open meeting in person, we ask that you notify us in advance and provide your name, date of birth, and social security number (SSN) or passport number. You may provide this information by calling 202–452–2474 or you may register online. You may pre-register until close of business on Friday, April 5, 2019. You also will be asked to provide identifying information, including a photo ID, before being admitted to the Board meeting. The Public Affairs Office must approve the use of cameras; please call 202–452–2955 for further information. If you need an accommodation for a disability, please contact Penelope Beattie on 202–452–3982. For the hearing impaired only, please use the Telecommunication Device for the Deaf (TDD) on 202–263–4869.

Privacy Act Notice: The information you provide will be used to assist us in prescreening you to ensure the security of the Board's premises and personnel. In order to do this, we may disclose your information consistent with the routine uses listed in the Privacy Act Notice for BGFRS–32, including to appropriate federal, state, local, or foreign agencies where disclosure is reasonably necessary to determine whether you pose a security risk or where the security or confidentiality of your information has been compromised. We are authorized to collect your information by 12 U.S.C. 243 and 248, and Executive Order 9397. In accordance with Executive Order 9397, we collect your SSN so that we can keep accurate records, because other people may have the same name and birth date. In addition, we use your SSN when we make requests for information about you from law enforcement and other regulatory agency databases. Furnishing the information requested is voluntary; however, your failure to provide any of the information requested may result in disapproval of your request for access to the Board's premises. You may be subject to a fine or imprisonment under 18 U.S.C. 1001 for any false statements you make in your request to enter the Board's premises.

MATTERS TO BE CONSIDERED:

Discussion Agenda

1. Proposed Rules on Prudential Standards for Foreign Banking Organizations and Resolution Plan Requirements for Foreign and Domestic Banking Organizations

Notes: 1. The staff memos to the Board will be made available to attendees on the day of the meeting in paper and the background material will be made available on a compact disc (CD). If you require a paper copy of the entire document, please call Penelope Beattie on 202–452–3982. The documentation will not be available to the public until about 20 minutes before the start of the meeting.

2. This meeting will be recorded for the benefit of those unable to attend. The webcast recording and a transcript of the meeting will be available after the meeting on the Board's public website *http://www.federalreserve.gov/about thefed/boardmeetings/* or if you prefer, a CD recording of the meeting will be available for listening in the Board's Freedom of Information Office, and copies can be ordered for $4 per disc by calling 202–452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

FOR MORE INFORMATION PLEASE CONTACT: Michelle Smith, Director, or Dave Skidmore, Assistant to the Board, Office of Board Members at 202–452–2955.

SUPPLEMENTARY INFORMATION: You may access the Board's public website at *www.federalreserve.gov* for an electronic announcement. (The website also includes procedural and other information about the open meeting.)

Dated: April 1, 2019.

Ann Misback,

Secretary of the Board.

[FR Doc. 2019–06645 Filed 4–2–19; 11:15 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

CDC/HRSA Advisory Committee on HIV, Viral Hepatitis and STD Prevention and Treatment (CHACHSPT)

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the CDC and the Health Resources and Services Administration (HRSA), announce the following meeting for the CDC/HRSA Advisory Committee on HIV, Viral Hepatitis and STD Prevention and Treatment (CHACHSPT). This meeting is open to the public, limited only by 90 seats and 70 ports for audio phone lines. Time will be available for public comment. The public is welcome to submit written comments in advance of the meeting. Comments should be submitted in writing by email to the contact person listed below. The deadline for receipts is Monday, May 13, 2019. Persons who desire to make an oral statement, may request it at the time of the public comments period on May 14, 2019 at 4:30 p.m., EDT.

DATES: The meeting will be held on May 14, 2019, 8:30 a.m. to 5:30 p.m., EDT and May 15, 2019, 8:30 a.m. to 12:30 p.m., EDT.

ADDRESSES: CDC Corporate Square, Building 8, Conference Room 1–ABC, 8 Corporate Boulevard, Atlanta, Georgia 30329 and Web conference: 1–877–603–4228, Participant code: 42598858 and *https://adobeconnect.cdc.gov/chac/.*

FOR FURTHER INFORMATION CONTACT: Margie Scott-Cseh, Committee Management Specialist, CDC, 1600 Clifton Road NE, Mailstop: E–07, Atlanta, Georgia 30329–4027, telephone (404) 639–8317; *zkr7@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Purpose: This committee is charged with advising the Director, CDC and the Administrator, HRSA, regarding activities related to prevention and control of HIV/AIDS, Viral Hepatitis and other STDs, the support of health care services to persons living with HIV/AIDS, and education of health

professionals and the public about HIV/AIDS, Viral Hepatitis and other STDs.

Matters To Be Considered: The agenda will include discussions on (1) Prevention of Perinatal HIV, Viral Hepatitis, and Congenital Syphilis: Examples from the Field; (2) Ending the HIV Epidemic—Collaborating Across Geographic Boundaries and Responsibilities; (3) Hepatitis C Virus (HCV) Elimination: Institutional Models; (4) Dating Apps and STD/HIV Risk: Opportunities for Promotion, Prevention, Monitoring and Evaluation; and (5) Updates from Workgroups. Agenda items are subject to change as priorities dictate.

The Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Sherri Berger,

Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2019–06607 Filed 4–3–19; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Mine Safety and Health Research Advisory Committee (MSHRAC)

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the CDC announces the following meeting for the Mine Safety and Health Research Advisory Committee (MSHRAC). This meeting is open to the public, limited only by the space available. The meeting room accommodates approximately 75 people. If you wish to attend in person or by phone, please contact Marie Chovanec by email at *MChovanec@cdc.gov* or by phone at 412–386–5302 at least 5 business days in advance of the meeting.

DATES: The meeting will be held on May 6, 2019, 8:30 a.m.–4:30 p.m., EDT and on May 7, 2019, 8 a.m.–120 p.m. EDT.

ADDRESSES: NIOSH Pittsburgh Campus, Building 140, Room 140MP, 626 Cochrans Mill Road, Pittsburgh, PA 15236, United States.

FOR FURTHER INFORMATION CONTACT: Jeffrey H. Welsh, Designated Federal Officer, MSHRAC, NIOSH, CDC, 626 Cochrans Mill Road, Pittsburgh, PA 15236, telephone 412–386–4040; email *juw5@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Purpose: This committee is charged with providing advice to the Secretary, Department of Health and Human Services; the Director, CDC; and the Director, NIOSH, on priorities in mine safety and health research, including grants and contracts for such research, 30 U.S.C. 812(b)(2), Section 102(b)(2).

Matters To Be Considered: The agenda will include discussions on mining safety and health research projects and outcomes, including updates from two MSHRAC Workgroups, the Health Advisory in the Mining Program Workgroup and the Metal Mining Automation and Advanced Technologies Workgroup; industrial minerals sector research priorities; translation of hand-arm vibration to the hearing canal; ground control challenges in Nevada weak rock; respirable dust control technology; EXAMiner hazard recognition training; slips, trips and falls research; health and safety management systems through safety climate; and lithium ion battery research. The meeting will also include updates from the NIOSH Associate Director for Mining, the Spokane Mining Research Division, the Pittsburgh Mining Research Division, the National Personal Protective Technology Laboratory and the Respiratory Health Division. Agenda items are subject to change as priorities dictate.

The Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Sherri Berger,

Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2019–06604 Filed 4–3–19; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Board on Radiation and Worker Health (ABRWH or the Advisory Board), National Institute for Occupational Safety and Health (NIOSH)

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the CDC announces the following meeting of the Advisory Board on Radiation and Worker Health (ABRWH). This meeting is open to the public, limited only by the space available. The meeting space accommodates approximately 150 people and the audio conference line has 150 ports for callers. The public is welcome to submit written comments in advance of the meeting, to the contact person below. Written comments received in advance of the meeting will be included in the official record of the meeting. The public is also welcome to listen to the meeting by joining the teleconference (information below).

DATES: The meeting will be held on April 17, 2019 from 8:30 a.m. to 6 p.m., EDT. A public comment session will be held on April 17, 2019 at 6 p.m. and conclude at 7 p.m. or following the final call for public comment, whichever comes first.

ADDRESSES: Pittsburgh Marriott City Center, 112 Washington Place, Pittsburg, PA 15219; Phone: (412) 471–4000, Fax: (412) 394–1017 and audio conference call via FTS Conferencing. The USA toll-free dial-in number is 1 (866) 659–0537; the pass code is 9933701. Web conference by Skype: Meeting CONNECTION: *https://webconf.cdc.gov/zab6/yzdq02pl?sl=1.*

FOR FURTHER INFORMATION CONTACT: Theodore Katz, MPA, Designated Federal Officer, NIOSH, CDC, 1600 Clifton Road NE, Mailstop E–20, Atlanta, Georgia 30329, Telephone (513) 533–6800, Toll Free 1(800) CDC–INFO, Email *ocas@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Advisory Board was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Advisory Board include

providing advice on the development of probability of causation guidelines which have been promulgated by the Department of Health and Human Services (HHS) as a final rule, advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule, advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program, and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC). In December 2000, the President delegated responsibility for funding, staffing, and operating the Advisory Board to HHS, which subsequently delegated this authority to the CDC. NIOSH implements this responsibility for CDC.

The Advisory Board's charter was issued on August 3, 2001, renewed at appropriate intervals, rechartered under Executive Order 13811 on February 12, 2018, and will terminate on September 30, 2019.

Purpose: This Advisory Board is charged with (a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advising the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

Matters To Be Considered: The agenda will include discussions on the following: NIOSH Program Update; Department of Labor Program Update; Department of Energy Program Update; SEC Petitions Update; SEC Petitions for: Sandia National Laboratory (Albuquerque, New Mexico, 1997–2011), Area IV Santa Susanna Field Laboratory (Ventura County, California, 1991–1993), Superior Steel Company (Carnegie, Pennsylvania), and Idaho National Laboratory (Scoville, Idaho, 1963–1970); and a Board Work Session. Agenda items are subject to change as priorities dictate.

The Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Sherri A. Berger,

Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2019–06602 Filed 4–3–19; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Interagency Committee on Smoking and Health (ICSH); Notice of Charter Renewal

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of charter renewal.

SUMMARY: This gives notice under the Federal Advisory Committee Act of October 6, 1972, that the Interagency Committee on Smoking and Health, Department of Health and Human Services, has been renewed for a 2-year period through March 20, 2021.

FOR FURTHER INFORMATION CONTACT: Simon McNabb, Designated Federal Officer, Interagency Committee on Smoking and Health, Centers for Disease Control and Prevention, Department of Health and Human Services, Patriot's Plaza, 395 E Street SW, M/S P06, Washington, DC 20201, telephone (202) 245–0550, Email: *BOL1@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. 2019–06605 Filed 4–3–19; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–1593]

Agency Information Collection Activities; Proposed Collection; Comment Request; Medical Device Accessories

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. 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 of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collections regarding medical device accessories requests.

DATES: Submit either electronic or written comments on the collection of information by June 3, 2019.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before June 3, 2019. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of June 3, 2019. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2016–N–1593 for ''Medical Device Accessories.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

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

FOR FURTHER INFORMATION CONTACT: Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: 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. ''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, including each proposed extension of an existing 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.

Medical Device Accessories

OMB Control Number 0910–0823—Extension

FDA's guidance document ''Medical Device Accessories—Describing Accessories and Classification Pathways'' (the Accessories guidance) [1] is intended to provide guidance to industry and FDA staff about the regulation of accessories to medical devices, to describe FDA's policy concerning the classification of accessories, and to discuss the application of this policy to devices that are commonly used as accessories to other medical devices. In addition, the guidance explains what devices FDA generally considers an ''accessory'' and describes the processes under section 513(f)(6) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360c(f)(6)) to allow requests for risk- and regulatory control-based classification of accessories.

We are requesting OMB approval to revise this information collection request (ICR) by adding burden estimates for two new accessory classification pathways created by the FDA Reauthorization Act of 2017 (FDARA) (Pub. L. 115–52).

FDARA changed how FDA regulates medical device accessories. Specifically, section 707 of FDARA added section 513(f)(6) to the statute and requires that FDA, upon request, classify existing and new accessories notwithstanding the classification of any other device with which such accessory is intended to be used. This means that the classification of an accessory may not be the same as its parent device, depending on the risks of the accessory when used as intended and the level of regulatory controls necessary for reasonable assurance of safety and effectiveness of the accessory. Until an accessory is distinctly classified, its existing classification will continue to apply. This provision does not preclude a manufacturer from submitting a De Novo request for an accessory.

When the Accessories guidance originally issued, FDA encouraged the use of the De Novo classification process to allow manufacturers to request risk- and regulatory control-based classification of accessories of a new type. FDA's recommendations in the guidance represented a new information collection as an accessory classification De Novo request. The information collected for an accessory classification De Novo request is substantially the same as a De Novo request (since approved under OMB control number 0910–0844), is submitted in the same manner, and has the same estimated information collection burden. The burden estimate associated with ''De Novo request under 21 U.S.C. 513(f)(2)(i)'' and ''De Novo request under 21 U.S.C. 513(f)(2)(ii),'' in

[1] The guidance document is available on FDA's website (*https://www.fda.gov/ucm/groups/fdagov-public/@fdagov-meddev-gen/documents/document/ucm429672.pdf*).

OMB control number 0910–0844, includes De Novo requests for accessories. We have determined that the burden estimate for ''Accessory Classification De Novo Requests'' in this ICR (Accessory Classification Requests; OMB control number 0910–0823) is redundant and have, therefore, removed it.

Depending on an accessory's regulatory history, there are different submission types, tracking mechanisms, and deadlines:

(1) Existing accessory types are those that have been identified in a classification regulation or granted marketing authorization as part of a 510(k), pre-market application (PMA), or De Novo request (approved under OMB control numbers 0910–0120, 0910–0231, and 0910–0844, respectively). Manufacturers with marketing authorization for an existing accessory may request appropriate classification through a new stand-alone premarket submission (Existing Accessory Request). Upon request, FDA is required to meet with a manufacturer or importer to discuss the appropriate classification of an existing accessory prior to submitting a written request. Existing Accessory Requests will be initially tracked as ''Q-submissions'' (approved under OMB control number 0910–0756). FDA has a statutory deadline of 85 calendar days to respond to an Existing Accessory Request.

(2) New accessory types are those that have not been granted marketing authorization as part of a 510(k), PMA, or De Novo request. Manufacturers may include new accessories into a 510(k) or PMA with the parent device (New Accessory Request). New Accessory Requests will have the same deadline as the 510(k) or PMA. Therefore, new accessory types should follow the applicable Medical Device User Fee Amendments of 2017 deadline for the parent submission. The decision for New Accessory Requests will be separate from the decision for the marketing application.

For both Existing and New Accessory Requests, manufacturers must request proper classification of their accessory in the submission and include draft special controls, if requesting classification into class II. The processes that we use to classify an accessory will be like those used for De Novo requests. If FDA grants the Accessory Request, FDA must issue an order establishing a new classification regulation for the accessory type. If FDA denies the Accessory Request, FDA must issue a letter with a detailed description and justification for our determination.

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
Existing Accessory Request	15	1	15	40	600
New Accessory Request	10	1	10	40	400
Total					1,000

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

We expect to receive approximately 15 Existing Accessory Requests and 10 New Accessory Requests per year. Based on estimates by FDA administrative and technical staff who are familiar with the submission process for accessory classification requests, we estimate that the ''Average Burden per Response'' for both Existing and New Accessory Requests will be approximately 40 hours per submission.

Our estimated burden for the information collection reflects an overall decrease of 440 hours and an increase of 17 responses. Factors contributing to the revision of the burden estimate include the addition of the two new accessory classification pathways created by FDARA and the removal of redundant burden described earlier in this document.

Dated: March 29, 2019.

Lowell J. Schiller,

Acting Associate Commissioner for Policy.

[FR Doc. 2019–06551 Filed 4–3–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–P–3412]

Determination That QVAR 40 and QVAR 80 (Beclomethasone Dipropionate HFA) Inhalation Aerosol, 40 Micrograms and 80 Micrograms, Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) has determined that QVAR 40 and QVAR 80 (beclomethasone dipropionate HFA) inhalation aerosol, 40 micrograms (mcg) and 80 mcg, were not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for QVAR 40 and QVAR 80 (beclomethasone dipropionate HFA) inhalation aerosol, 40 mcg and 80 mcg, if all other legal and regulatory requirements are met.

FOR FURTHER INFORMATION CONTACT: Nikki Mueller, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6280, Silver Spring, MD 20993–0002, 301–796–3507.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products under an ANDA procedure. ANDA applicants must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA).

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs.

FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is known generally as the ''Orange Book.'' Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn from sale, but must be made prior to approving an ANDA that refers to the listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

QVAR 40 and QVAR 80 (beclomethasone dipropionate HFA) inhalation aerosol, 40 mcg and 80 mcg, are the subject of NDA 020911, held by TEVA Branded Pharmaceutical Products R&D, Inc. (TEVA), and initially approved on September 15, 2000. QVAR 40 and QVAR 80 are indicated for the maintenance treatment of asthma as a prophylactic therapy in patients 5 years of age and older.

Aurolife Pharma LLC submitted a citizen petition dated September 6, 2018 (Docket No. FDA–2018–P–3412), under 21 CFR 10.30, requesting that the Agency determine whether QVAR 40 and QVAR 80 (beclomethasone dipropionate HFA) inhalation aerosol, 40 mcg and 80 mcg, were withdrawn from sale for reasons of safety or effectiveness.

After considering the citizen petition and reviewing Agency records and based on the information we have at this time, FDA has determined under § 314.161 that QVAR 40 and QVAR 80 (beclomethasone dipropionate HFA) inhalation aerosol, 40 mcg and 80 mcg, were not withdrawn for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that QVAR 40 and QVAR 80 (beclomethasone dipropionate HFA) inhalation aerosol, 40 mcg and 80 mcg, were withdrawn for reasons of safety or effectiveness. In addition, the petitioner provided information indicating that TEVA made a business decision to discontinue manufacturing of these drug products. We have carefully reviewed our files for records concerning the withdrawal of QVAR 40 and QVAR 80 (beclomethasone dipropionate HFA) inhalation aerosol, 40 mcg and 80 mcg, from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events. We have reviewed the available evidence and determined that these drug products were not withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list QVAR 40 and QVAR 80 (beclomethasone dipropionate HFA) inhalation aerosol, 40 mcg and 80 mcg, in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to QVAR 40 and QVAR 80 (beclomethasone dipropionate HFA) inhalation aerosol, 40 mcg and 80 mcg, may be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for this drug product should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: March 29, 2019.

Lowell J. Schiller,

Acting Associate Commissioner for Policy.

[FR Doc. 2019–06552 Filed 4–3–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0976]

Agency Information Collection Activities; Proposed Collection; Comment Request; Guidance: Emergency Use Authorization of Medical Products and Related Authorities

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. 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 of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the proposed extension of the collection of information related to emergency use authorizations by the Agency.

DATES: Submit either electronic or written comments on the collection of information by June 3, 2019.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before June 3, 2019. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of June 3, 2019. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and

identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2012–N–0976 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Guidance: Emergency Use Authorization of Medical Products and Related Authorities.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

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

FOR FURTHER INFORMATION CONTACT: Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: 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. ''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, including each proposed extension of an existing 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.

Guidance: Emergency Use Authorization of Medical Products and Related Authorities

OMB Control Number 0910–0595—Extension

The guidance describes the Agency's policies applicable to the authorization of the emergency use of certain medical products under sections 564, 564A, and 564B of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360bbb–3, 360bbb–3a, and 360bbb–3b), as amended or added by the Project BioShield Act of 2004 (Pub. L. 108–276), the Pandemic and All-Hazards Preparedness Reauthorization Act of 2013 (Pub. L. 113–5), 21st Century Cures Act (Pub. L. 114–255), and Public Law 115–92 (2017). The FD&C Act permits the Commissioner to authorize the use of unapproved medical products or unapproved uses of approved medical products during an emergency declared under section 564 of the FD&C Act. The data to support issuance of an emergency use authorization (EUA) must demonstrate that, based on the totality of the scientific evidence available to the Commissioner, including data from adequate and well-controlled clinical trials (if available), it is reasonable to believe that the product may be effective in diagnosing, treating, or preventing a serious or life-threatening disease or condition (21 U.S.C. 360bbb–3(c)). Although the exact type and amount of data needed to support an EUA may vary depending on the nature of the declared emergency and the nature of the candidate product, FDA recommends that a request for consideration for an EUA include scientific evidence evaluating the product's safety and effectiveness, including the adverse event profile for diagnosis, treatment, or prevention of the serious or life-threatening disease or condition, as well as data and other information on safety, effectiveness, risks and benefits, and (to the extent available) alternatives.

Under section 564 of the FD&C Act, the FDA Commissioner may establish conditions on the authorization. Section 564(e) requires the FDA Commissioner (to the extent practicable given the circumstances of the emergency) to establish certain conditions on an authorization that the Commissioner finds necessary or appropriate to protect the public health and permits the FDA Commissioner to establish other conditions that he or she finds necessary or appropriate to protect the public health. Conditions authorized by section 564(e) of the FD&C Act include, for example: Requirements for information dissemination to healthcare providers or authorized dispensers and product recipients; adverse event monitoring and reporting; data collection and analysis; recordkeeping and records access; restrictions on product advertising, distribution, and administration; and limitations on good manufacturing practices requirements. Some conditions, the statute specifies, are mandatory to the extent practicable for authorizations of unapproved products and discretionary for authorizations of unapproved uses of approved products. Moreover, some conditions may apply to manufacturers of an EUA product, while other conditions may apply to any person who carries out any activity for which

the authorization is issued. Section 564 of the FD&C Act also gives the FDA Commissioner authority to establish other conditions on an authorization that he or she finds to be necessary or appropriate to protect the public health. Additionally, sections 564A and 564B established streamlined mechanisms to facilitate preparedness and response activities involving certain FDA-approved products without requiring FDA to issue an EUA, including expiration date extension authority.

For purposes of estimating the annual burden of reporting (table 1), FDA has established four categories of respondents: (1) Those who file a request for FDA to issue an EUA or a substantive amendment to an EUA that has previously been issued, assuming that a requisite declaration under section 564 of the FD&C Act has been made and criteria for issuance have been met; (2) those who submit a request for FDA to review information/data (*i.e.,* a pre-EUA package) for a candidate EUA product or a substantive amendment to an existing pre-EUA package for preparedness purposes; (3) manufacturers who carry out an activity related to an unapproved EUA product (*e.g.,* administering product, disseminating information) who must report to FDA regarding such activity; and (4) public health authorities (*e.g.,* State, local) who carry out an activity (*e.g.,* administering product, disseminating information) related to an unapproved EUA product who must report to FDA regarding such activity or who submit to FDA an expiration date extension request for an approved product.

In some cases, manufacturers directly submit EUA requests. Often a Federal Government entity (*e.g.,* Centers for Disease Control and Prevention, Department of Defense) requests that FDA issue an EUA and submits pre-EUA packages for FDA to review. In many of these cases, manufacturer respondents inform these requests and submissions, which are the activities that form the basis of the estimated reporting burdens. However, in some cases the Federal Government is the sole respondent; manufacturers do not inform these requests or submissions. FDA estimates minimal burden when the Federal Government performs the relevant activities. In addition to variability based on whether there is an active manufacturer respondent, other factors also inject significant variability in estimates for annual reporting burdens. A second factor is the type of product. For example, FDA estimates greater burden for novel therapeutics than for certain unapproved uses of approved products. A third significant factor that injects variability is the type of submission. For example, FDA estimates greater burden for ''original'' EUA and pre-EUA submissions than for amendments to them, and FDA estimates minimal burden to issue an EUA when there is a previously reviewed pre-EUA package or investigational application. For purposes of estimating the reporting burden, FDA has calculated the anticipated burden on manufacturers based on the anticipated types of responses (*i.e.,* estimated manufacturer input), types of product, and types of submission that comprise the described reporting activities.

For purposes of estimating the annual burden of recordkeeping, FDA has also calculated the anticipated burden on manufacturers and public health officials associated with administration of unapproved products authorized for emergency use, recognizing that the Federal Government will perform much of the recordkeeping related to administration of such products (table 2). FDA is not calculating any recordkeeping burden for public health authorities who may need to submit expiration date extension requests, as these entities already maintain records for the products that they stockpile, which would include records of any expiration date request or extension.

The guidance refers to previously approved collections of information. These collections are subject to review by the OMB under the PRA. These collections have been approved as follows: Adverse experience reporting for biological products is approved under OMB control number 0910–0308; adverse drug experience reporting is approved under OMB control number 0910–0230; adverse device experience reporting is approved under OMB control number 0910–0471; investigational new drug (IND) application regulations are approved under OMB control number 0910–0014and investigational device exemption (IDE) reporting is approved under OMB control number 0910–0078; current good manufacturing practices for finished pharmaceuticals are approved under OMB control number 0910–0139, and for devices under OMB control number 0910–0073; applications for marketing a new drug are approved under OMB control number 0910–0001, and for biological products under OMB control number. Any additional burden imposed by this proposed collection would be minimal.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Type of respondent	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response (hours)	Total hours
Requests to Issue an EUA or a Substantive Amendment to an Existing EUA	12	2.39	29	45	1,305
FDA Review of a Pre-EUA Package or an Amendment Thereto	32	1.79	57	34	1,938
Manufacturers of an Unapproved EUA Product	12	5.8	70	2	140
Public Health Authorities; Unapproved EUA Product	30	3	90	2	180
Public Health Authorities; Request for Expiration Date Extension	1	1	1	2	2
Total					3,565

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

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

Type of respondent	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
Manufacturers of an Unapproved EUA Product	12	2	24	25	600
Public Health Authorities; Unapproved EUA Product	30	3	90	3	270
Total					870

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

Our estimated annual reporting burden for the information collection reflects an overall increase of 239 hours since our last request for OMB approval. We attribute this adjustment to an increase in the number of submissions we received.

Dated: March 29, 2019.

Lowell J. Schiller,

Acting Associate Commissioner for Policy.

[FR Doc. 2019–06553 Filed 4–3–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–D–1163]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Providing Regulatory Submissions in Electronic and Non-Electronic Format—Promotional Labeling and Advertising Materials for Human Prescription Drugs

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by May 6, 2019.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, Fax: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–NEW and title ''Providing Regulatory Submissions in Electronic and Non-Electronic Format—Promotional Labeling and Advertising Materials for Human Prescription Drugs.'' Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Providing Regulatory Submissions in Electronic and Non-Electronic Format—Promotional Labeling and Advertising Materials for Human Prescription Drugs—OMB Control Number 0910–NEW

This information collection request supports recommendations found in the Agency guidance document entitled, ''Providing Regulatory Submissions in Electronic and Non-Electronic Format—Promotional Labeling and Advertising Materials for Human Prescription Drugs.'' The guidance document outlines the requirements and recommendations for manufacturers, packers, and distributors (firms) that may either be the applicant or acting on behalf of the applicant, to make submissions pertaining to promotional materials for human prescription drugs (''drugs'') to the Office of Prescription Drug Promotion (OPDP) in the Center for Drug Evaluation and Research (CDER) and the Advertising and Promotional Labeling Branch (APLB) in the Center for Biologics Evaluation and Research (CBER). References to ''drugs'' in the guidance also include human biological products that fall within the definition of ''drug'' under section 201(g) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 321(g)).

The guidance describes the various types of submissions of promotional materials and general considerations for submissions. The guidance discusses the specific aspects of submission of promotional materials using module 1 of the electronic Common Technical Document (eCTD) using version 3.3 or higher of the *us-regional-backbone* file. The guidance does not address the more general requirements for a valid electronic submission using eCTD or the specifications for module 1 of the eCTD. The guidance contains both binding and nonbinding provisions. The provisions that are binding implement section 745A(a) of the FD&C Act (21 U.S.C. 379k–1(a)), which requires that certain submissions be submitted in electronic format specified by FDA, beginning no earlier than 24 months after FDA issues a final guidance specifying such electronic submission format.

The guidance provides recommendations for what to include with each type of submission and the number of copies to include if it is a paper submission. For promotional labeling submitted for advisory comments, including resubmissions, a submission generally includes correspondence stating that it is a request for advisory comments, a clean version of the draft promotional materials, an annotated copy of the promotional materials, and the most current FDA-approved prescribing information (PI); if applicable, a submission also includes the FDA-approved patient labeling or Medication Guide with annotations cross-referenced to the proposed promotional materials and annotated references to support product and disease or epidemiology claims not contained in the PI cross-referenced to the promotional material. Amendments should be submitted if the previous submission to FDA is missing one or more promotional materials or if an incorrect document file was included with a submission in eCTD format. Amendments should include correspondence stating it is an amendment and include the accompanying materials that were previously missing, an annotated copy of the promotional materials that were omitted from a previous submission to FDA, the FDA-approved patient labeling or Medication Guide with annotations

cross-referenced to the proposed promotional materials, and annotated references to support product and disease or epidemiology claims not contained in the PI cross-referenced to the promotional material.

General correspondence submissions and submissions requesting to withdraw a previous submission to FDA include correspondence stating the purpose of the submission.

Responses to untitled or warning letter submissions include correspondence stating that it is a response to an untitled or warning letter, and include the firm's initial or subsequent responses and the corrective piece(s), if applicable.

Responses to information request submissions include the firm's response to the questions and issues raised in FDA's letter of inquiry, including any materials that FDA has requested.

Reference document submissions include correspondence stating that it is a reference document submission and the specific information regarding what is in the submission along with the annotated references, annotated promotional materials, and/or annotated labeling.

Promotional labeling submitted for advisory comments, including resubmissions and amendments; general correspondence; requests to withdraw a previous submission; responses to untitled or warning letters; responses to information requests; and reference documents can be submitted in paper or electronic form, and the burden estimates for these submissions in table 1 apply to both paper and electronic form.

Complaints include correspondence stating that it is a complaint and supporting information or documentation, if available. Complaints are not accepted in electronic form and should be submitted as paper copies. The burden estimate for complaints in table 1 thus applies to paper copies only.

The guidance also describes the number of paper copies that should be sent to OPDP and APLB for each submission type (if applicable).

The guidance provides recommendations for presentation considerations such as appearance, layout, format, and visible impression of promotional materials submitted for all promotional submission types.

The guidance also provides instructions on how to submit promotional labeling and advertising materials to FDA electronically in eCTD format. It explains that for submissions of promotional materials that fall within the ambit of section 745A(a) of the FD&C Act (21 U.S.C. 379k–1(a)), as amended by section 1136 of the Food and Drug Administration Safety and Innovation Act (Pub. L. 112–144), such submissions must be made in the electronic format specified by FDA in the guidance, beginning no earlier than 24 months after the guidance is finalized. Specifically, (1) postmarketing submissions of promotional materials using Form FDA 2253 (required by 21 CFR 314.81(b)(3)(i) and 601.12(f)(4)), and (2) submissions of promotional materials for accelerated approval products (required by FD&C Act section 506(c)(2)(B) (21 U.S.C. 356(c)(2)(B)), and 21 CFR 314.550 and 601.45) and other products where such submissions are required for approval, fall within the scope of section 745A(a) and are, therefore, subject to the mandatory electronic submission requirement.

When the mandatory electronic submission requirement takes effect for these types of submissions, they will be accepted by CDER only in eCTD format using version 3.3 or higher of the *us-regional-backbone* file. CBER will be able to accept eCTD submissions using previous versions of the *us-regional-backbone* file until 24 months after publication of the guidance. The guidance also provides that, while only promotional submissions that fall under section 745A(a) will be required to be submitted electronically no sooner than 24 months after the guidance is finalized, firms are strongly encouraged, but not required, to submit electronically the other types of promotional submissions discussed in the guidance.

In the **Federal Register** of April 22, 2015 (80 FR 22529), we published a 60-day notice requesting public comment on the proposed collection of information. One comment was received requesting clarification on the submission of annotated versions of promotional materials for Form FDA 2253 submissions. We appreciate the comment and have revised the guidance to further clarify that annotated versions of promotional materials are encouraged, not required. The guidance was also revised to encourage the submission of a CD copy of paper submissions and burden estimates have been updated accordingly. Any increase in burden is expected to be nominal.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Type of submission	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response (hours)	Total hours
Promotional labeling submitted for advisory comments, including resubmissions and amendments	76	13	1,024	51	52,224
General correspondence submitted to FDA	84	4	359	3	1,077
Requests to withdraw a previous submission to FDA	15	1	22	3	66
Responses to untitled or warning letters	7	2	13	13	169
Responses to information requests	6	1	3	13	39
Reference documents	7	2	14	13	182
Complaints submitted to FDA	82	1	117	13	1,521
Total					55,278

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

Our estimate is based on our experience with the submission of labeling materials for human prescription drugs. Because this is a new collection of information, we are specifically interested in receiving comments from respondents to the information collection regarding our burden estimate.

Dated: March 29, 2019.

Lowell J. Schiller,

Acting Associate Commissioner for Policy.

[FR Doc. 2019–06565 Filed 4–3–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–P–3883]

Determination That CORTISPORIN (Hydrocortisone/Neomycin Sulfate/Polymyxin B Sulfate) Otic Solution, 10 Milligrams/Milliliter Hydrocortisone, 3.5 Milligrams Base/Milliliter Neomycin Sulfate, 10,000 Units/Milliliter Polymyxin B Sulfate, Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) has determined that CORTISPORIN (hydrocortisone/neomycin sulfate/polymyxin B sulfate) otic solution, 10 milligrams (mg)/milliliter (mL) hydrocortisone, 3.5 mg base/mL neomycin sulfate, 10,000 units/mL polymyxin B sulfate, was not withdrawn from sale for reasons of safety or effectiveness. This determination means that FDA will not begin procedures to withdraw approval of abbreviated new drug applications (ANDAs) that refer to this drug product, and it will allow FDA to continue to approve ANDAs that refer to the product as long as they meet relevant legal and regulatory requirements.

FOR FURTHER INFORMATION CONTACT: Kate Greenwood, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6286, Silver Spring, MD 20993–0002, 240–402–1748.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products under an ANDA procedure. ANDA applicants must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA).

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is known generally as the ''Orange Book.'' Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn from sale, but must be made prior to approving an ANDA that refers to the listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

CORTISPORIN (hydrocortisone/neomycin sulfate/polymyxin B sulfate) otic solution, 10 mg/mL hydrocortisone, 3.5 mg base/mL neomycin sulfate, 10,000 units/mL polymyxin B sulfate, is the subject of NDA 050479, held by Monarch Pharmaceuticals LLC, and initially approved on December 9, 1975. CORTISPORIN is indicated for the treatment of superficial bacterial infections of the external auditory canal caused by organisms susceptible to the action of the antibiotics.

CORTISPORIN (hydrocortisone/neomycin sulfate/polymyxin B sulfate) otic solution, 10 mg/mL hydrocortisone, 3.5 mg base/mL neomycin sulfate, 10,000 units/mL polymyxin B sulfate, is currently listed in the ''Discontinued Drug Product List'' section of the Orange Book.

Foley & Lardner LLP submitted a citizen petition dated October 11, 2018 (Docket No. FDA–2018–P–3883), under § 10.30 (21 CFR 10.30), requesting that the Agency determine whether CORTISPORIN (hydrocortisone/neomycin sulfate/polymyxin B sulfate) otic solution, 10 mg/mL hydrocortisone, 3.5 mg base/mL neomycin sulfate, 10,000 units/mL polymyxin B sulfate, was withdrawn from sale for reasons of safety or effectiveness.

After considering the citizen petition and reviewing Agency records and based on the information we have at this time, FDA has determined under § 314.161 that CORTISPORIN (hydrocortisone/neomycin sulfate/polymyxin B sulfate) otic solution, 10 mg/mL hydrocortisone, 3.5 mg base/mL neomycin sulfate, 10,000 units/mL polymyxin B sulfate, was not withdrawn for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that CORTISPORIN (hydrocortisone/neomycin sulfate/polymyxin B sulfate) otic solution, 10 mg/mL hydrocortisone, 3.5 mg base/mL neomycin sulfate, 10,000 units/mL polymyxin B sulfate, was withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of CORTISPORIN (hydrocortisone/neomycin sulfate/polymyxin B sulfate) otic solution, 10 mg/mL hydrocortisone, 3.5 mg base/mL neomycin sulfate, 10,000 units/mL polymyxin B sulfate, from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events. We have found no information that would indicate that this drug product was withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list CORTISPORIN (hydrocortisone/neomycin sulfate/polymyxin B sulfate) otic solution, 10 mg/mL hydrocortisone, 3.5 mg base/mL neomycin sulfate, 10,000 units/mL polymyxin B sulfate, in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. FDA will not begin procedures to withdraw approval of approved ANDAs that refer to this drug product. Additional ANDAs for this drug product may also be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs.

If FDA determines that labeling for this drug product should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: March 29, 2019.

Lowell J. Schiller,

Acting Associate Commissioner for Policy.

[FR Doc. 2019–06549 Filed 4–3–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Charter Renewal

In accordance with Title 41 of the U.S. Code of Federal Regulations, Section 102–3.65(a), notice is hereby given that the Charter for the Frederick National Laboratory Advisory Committee to the National Cancer Institute was renewed for an additional two-year period on March 30, 2019.

It is determined that the Frederick National Laboratory Advisory Committee to the National Cancer Institute is in the public interest in connection with the performance of duties imposed on the National Cancer Institute and National Institutes of Health by law, and that these duties can best be performed through the advice and counsel of this group.

Inquiries may be directed to Claire Harris, Acting Director, Office of Federal Advisory Committee Policy, Office of the Director, National Institutes of Health, 6701 Democracy Boulevard, Suite 1000, Bethesda, Maryland 20892 (Mail code 4875), Telephone (301) 496–2123, or *harriscl@nih.gov*.

Dated: April 1, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–06569 Filed 4–3–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of an Exclusive/Co-Exclusive Patent License: Development and Commercialization of Next Generation Chimeric Antigen Receptor (CAR) Therapies for the Treatment of FMS-Like tyrosine kinase 3 (FLT3) Expressing Cancers

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The National Cancer Institute, an institute of the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an Exclusive/Co-Exclusive Patent License to practice the inventions embodied in the Patents and Patent Applications listed in the Supplementary Information section of this Notice to Senti Bio (''Senti''), located in South San Francisco, CA.

DATES: Only written comments and/or applications for a license which are received by the National Cancer Institute's Technology Transfer Center on or before April 19, 2019 will be considered.

ADDRESSES: Requests for copies of the patent applications, inquiries, and comments relating to the contemplated Exclusive/Co-Exclusive Patent License should be directed to: Jim Knabb, Senior Technology Transfer Manager, NCI Technology Transfer Center, 9609 Medical Center Drive, RM 1E530, MSC 9702, Bethesda, MD 20892–9702 (for business mail), Rockville, MD 20850–9702; Telephone: (240)–276–7856; Facsimile: (240)–276–5504; Email: *jim.knabb@nih.gov.*

SUPPLEMENTARY INFORMATION:

Intellectual Property

E–133–2016: FLT3-Specific Chimeric Antigen Receptors and Methods Using Same

1. US Provisional Patent Application 62/342,394, filed May 27, 2016 (E–133–2016–0–US–01);
2. International Patent Application PCT/US2017/034,691, filed May 26, 2017 (E–133–2016–0–PCT–02)
3. EP Patent Application No.:17729627.4, filed December 11, 2018 (E–133–2016/0–EP–03)
4. US Patent Application No.: 16/304,552, filed November 26, 2018 (E–133–2016/0–US–05
5. Australia Patent Application No.: 2017271606, filed November 13, 2018 (E–133–2016/0–AU–06)
6. Canadian Patent Application No.: 3025516, filed November 23, 2018 (E–133–2016/0–CA–07)
7. Japan Patent Application No.: 2018–561669, filed November 22, 2018 (E–133–2016/0–JP–08)

The patent rights in these inventions have been assigned and/or exclusively licensed to the government of the United States of America.

The prospective exclusive/co-exclusive license territory may be worldwide, and the fields of use may be limited to the following:

An exclusive license to: ''the development of a universal/split chimeric antigen receptor (CAR)-based immunotherapy using autologous or allogeneic human lymphocytes (T cells or NK cells) transduced with lentiviral vectors, for the prophylaxis or treatment of cancers expressing FMS-like tyrosine kinase 3 (FLT3; also known as CD135), wherein the CAR construct binds to the FLT3-binding domain referenced as NC7 in the invention, but NC7 is not included in the CAR construct. Specifically excluded from the field of use for this exclusive license are FLT3-specific CAR -based immunotherapies wherein the CAR construct comprises the FLT3-binding domain referenced as NC7 in the invention as well as an intracellular signaling domain.'' The proposed territory is worldwide.

A co-exclusive license to: ''the development of a multi-specific FLT3 CAR-based immunotherapy using autologous or allogeneic human lymphocytes (T cells or NK cells) transduced with lentiviral vectors, wherein the viral transduction leads to the expression of a CAR that targets FLT3 (comprised of the FLT3-binding domain referenced as NC7 in the invention as well as an intracellular signaling domain), for the prophylaxis or treatment of FLT3-expressing cancers.'' The proposed territory is worldwide.

A co-exclusive license to: ''the development of a FLT3-specific Regulated/Switch/Logic-Gated CAR-based immunotherapy using autologous or allogeneic human lymphocytes (T cells or NK cells) transduced with lentiviral vectors, wherein the viral transduction leads to the expression of a CAR that targets FLT3 (comprised of the FLT3-binding domain referenced as NC7 in the invention as well as an intracellular signaling domain), for the prophylaxis or treatment of FLT3-expressing cancers.'' The proposed territory is worldwide.

This technology discloses a CAR therapy that targets FLT3 by utilizing the anti-FLT3 binder known as NC7. FLT3 (CD135) is a cytokine receptor expressed on hematopoietic progenitor cells and is one of the most frequently mutated genes in acute myeloid leukemia (AML) and infant acute lymphoblastic leukemia (ALL). FLT3 mutation leads to increased cell surface expression and therefore on leukemic cells, which makes it an attractive candidate for cellular therapies such as CAR–T.

This Notice is made in accordance with 35 U.S.C. 209 and 37 CFR part 404. The prospective exclusive/co-exclusive license will be royalty bearing, and the prospective exclusive/co-exclusive license may be granted unless within fifteen (15) days from the date of this published Notice, the National Cancer Institute receives written evidence and argument that establishes that the grant of the license would not be consistent

with the requirements of 35 U.S.C. 209 and 37 CFR part 404.

In response to this Notice, the public may file comments or objections. Comments and objections, other than those in the form of a license application, will not be treated confidentially, and may be made publicly available.

License applications submitted in response to this Notice will be presumed to contain business confidential information and any release of information from these license applications will be made only as required and upon a request under the Freedom of Information Act, 5 U.S.C. 552.

Dated: March 28, 2019.

Richard U. Rodriguez,

Associate Director, Technology Transfer Center, National Cancer Institute.

[FR Doc. 2019–06575 Filed 4–3–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-Day Comment Request; Scientific Information Reporting System (SIRS) (National Institute of General Medical Sciences)

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995 to provide opportunity for public comment on proposed data collection projects, the National Institute of General Medical Sciences (NIGMS), will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Dr. Ming Lei, Director, Division for Research Capacity Building NIGMS, NIH, 45 Center Drive, Room 2AS44C, MSC–6200, Bethesda, Maryland 20892 or call non-toll-free number (301) 827–5323 or Email your request, including your address to: *leim@mail.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

SUPPLEMENTARY INFORMATION: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires: Written comments and/or suggestions from the public and affected agencies are invited to address one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Proposed Collection Title: Scientific Information Reporting System (SIRS), 0925–0735, Expiration Date 3/31/2019, REINSTATEMENT WITHOUT CHANGE, National Institute of General Medical Sciences (NIGMS), National Institutes of Health (NIH).

Need and Use of Information Collection: The SIRS is an online data collection system whose purpose is to obtain supplemental information to the annual Research Performance Progress Report (RPPR) submitted by grantees of the Institutional Development Award (IDeA) Program and the Native American Research Centers for Health (NARCH) Program. The SIRS will collect program-specific data not requested in the RPPR data collection system. The IDeA Program is a congressionally mandated, long-term interventional program administered by NIGMS aimed at developing and/or enhancing the biomedical research competitiveness of States and Jurisdictions that lag in NIH funding. The NARCH Program is an interagency initiative that provides support to American Indian and Alaska Native (AI/AN) tribes and organizations for conducting research in their communities in order to address health disparities, and to develop a cadre of competitive AI/AN scientists and health professionals. The data collected by SIRS will provide valuable information for the following purposes: (1) Evaluation of progress by individual grantees towards achieving grantee-designated and program-specified goals and objectives, (2) evaluation of the overall program for effectiveness, efficiency, and impact in building biomedical research capacity and capability, and (3) analysis of outcome measures to determine need for refinements and/or adjustments of different program features including but not limited to initiatives and eligibility criteria. Data collected from SIRS will be used for various regular or *ad hoc* reporting requests from interested stakeholders that include members of Congress, state and local officials, other federal agencies, professional societies, media, and other parties.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 744.

ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Type of respondent	Number of respondents	Number of responses per respondent	Average time per response (in hours)	Total annual burden hours
SIRS	Principal Investigators, COBRE Phase I	54	1	3.5	189
SIRS	Principal Investigators, COBRE Phase II	34	1	3.5	119
SIRS	Principal Investigators, COBRE Phase III	54	1	3.5	189
SIRS	Principal Investigators, INBRE	24	1	5.5	132
SIRS	Principal Investigators, IDeA–CTR	11	1	3.5	38.5
SIRS	Principal Investigators, NARCH	17	1	4.5	76.5
Total		194	194		744

Rusinel Amarante,

Project Clearance Liaison, National Institute of General Medical Sciences, National Institutes of Health.

[FR Doc. 2019–06572 Filed 4–3–19; 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 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 Dental and Craniofacial Research Special Emphasis Panel.

Date: June 6, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892.

Contact Person: Crina Frincu, Ph.D., Scientific Review Branch, National Institute of Dental and Craniofacial Research, National Institute of Health, 6701 Democracy Boulevard, Bethesda, MD 20817, *Crina.frincu@nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; NIDCR Secondary Data Analysis Review.

Date: June 7, 2019.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892.

Contact Person: Guo He Zhang, MPH, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of Dental and Craniofacial Research, National Institutes of Health, 6701 Democracy Boulevard, Suite 672, Bethesda, MD 20892, *zhanggu@mail.nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; Oral Biodevices—Special Emphasis Panel.

Date: June 11, 2019.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health. One Democracy Plaza. 6701 Democracy Boulevard, Bethesda, MD 20892.

Contact Person: Yun Mei, MD, Scientific Review Branch, NIDCR, NIH, 6701 Democracy Blvd, 1DEM/ROOM 667, Bethesda, MD 20892, 301.827.4639, *yun.mei@nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel.

Date: June 17, 2019.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Room 651, Bethesda, MD 20892.

Contact Person: Nisan Bhattacharyya, Ph.D., Scientific Review Officer, Scientific Review Branch, NIDCR, NIH, 6701 Democracy Boulevard, Suite 668, Bethesda, MD 20892, 301–451–2405, *nisan_bhattacharyya@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: March 29, 2019.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–06570 Filed 4–3–19; 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 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 Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Digestive Clinical SBIR Applications.

Date: April 15, 2019.

Time: 2:00 p.m. to 4:00 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: Ryan G. Morris, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7015, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, 301–594–4721, *ryan.morris@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Time-Sensitive Obesity.

Date: May 3, 2019.

Time: 2:30 p.m. to 4:00 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: Michele L. Barnard, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7353, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, (301) 594–8898, *barnardm@extra.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: March 29, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–06567 Filed 4–3–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; 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 grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; Comprehensive Partnerships to Advance Cancer Health Equity (CPACHE) (U54).

Date: May 3, 2019.

Time: 7:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Clifford W. Schweinfest, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W108, Bethesda, MD 20892–9750, 240–276–6343, *schweinfestcw@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; Improving Smoking Cessation Interventions Among People Living with HIV (R01 & R21).

Date: June 6, 2019.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W238, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Byeong-Chel Lee, Ph.D., Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W238, Bethesda, MD 20892–9750, 240–276–7755, *byeong-chel.lee@nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI Program Project IV (P01).

Date: June 6–7, 2019.

Time: 4:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Jennifer C. Schiltz, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W112, Bethesda, MD 20892–9750, 240–276–5864, *jennifer.schiltz@nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel; IMAT Biospecimen Research.

Date: June 20, 2019.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W246, Rockville, MD 20850 (Telephone Conference Call).

Contact Person: Jun Fang, Ph.D., Scientific Review Officer, Research Technology & Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W246, Bethesda, MD 20892–9750, 240–276–5460, *jfang@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 29, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–06568 Filed 4–3–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meeting will be open to the public to attend or dial-in, with in-person 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: National Cancer Institute Clinical Trials and Translational Research Advisory Committee; Translational Research Strategy Subcommittee (TRSS).

Date: May 8, 2019.

Time: 10:00 a.m. to 11:00 a.m.

Agenda: Review the Glioblastoma (GBM) Working Group Report.

Place: National Institutes of Health, Building 31, Room 11A01, 31 Center Drive, Bethesda, MD 20892, (Join by Phone), 855–259–6342 [Toll Free], Conference Code:1102766460, Passcode: 6460.

Contact Person: Peter Ujhazy, MD, Ph.D., Deputy Associate Director, Translational Research Program, Division of Cancer Treatment and Diagnosis, National Institutes of Health, National Cancer Institute, 9609 Medical Center Drive. Room 3W106, Rockville, MD 20850, 240–276–5681, *ujhazyp@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/ctac/ctac.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 29, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–06571 Filed 4–3–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2019–N002; FXES11140800000–190–FF08E00000]

Draft City of Rancho Palos Verdes Natural Community Conservation Plan and Habitat Conservation Plan and Draft Environmental Assessment, City of Rancho Palos Verdes, Los Angeles County, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for public comment.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the recirculation of the draft Natural Community Conservation Plan/Habitat Conservation Plan (NCCP/HCP) and draft environmental assessment (draft EA), which evaluates the impacts of, and alternatives to, the proposed City of Rancho Palos Verdes (City of RPV) NCCP/HCP. The recirculation is necessary to maximize public review because, while the document provided during the initial 60-day comment period was the document considered by the City of RPV Council at their March 29, 2018, Council Meeting, it did not include changes accepted by City of RPV Council via late correspondence at the Council Meeting, nor did it include technical and clarifying edits made after the Council Meeting. We request review and comment on the City of RPV NCCP/HCP and the draft EA from local, State, and Federal agencies; Tribes; and the public.

DATES: To ensure consideration, please send your written comments by May 6, 2019.

ADDRESSES:

Obtaining Documents: You may obtain copies of the City of RPV NCCP/HCP and the draft EA by the following methods. Please specify that your request pertains to the City of RPV NCCP/HCP.

- *Email: katiel@rpvca.gov.*
- *Internet: http://www.rpvca.gov/490/Palos-Verdes-Nature-Preserve-NCCP–PUMP–H.*
- *U.S. Mail:* A limited number of CD–ROM and printed copies are available, by request, from the following locations:
  - Carlsbad Fish and Wildlife Office, 2177 Salk Avenue, Suite 250, Carlsbad, CA 92008;
  - Rancho Palos Verdes City Hall (see address under *In-Person,* below).
- *In-Person:* Copies are available for public inspection and review at the following locations, by appointment and written request only:
  - Rancho Palos Verdes City Hall, 30940 Hawthorne Blvd., Rancho Palos Verdes, CA 90275 (telephone: 310–554–5267; 7:30 a.m. to 5:30 p.m., Monday through Thursday, and 7:30 a.m. to 4:30 p.m. on Friday); and
  - Palos Verdes Peninsula Land Conservancy, 916 Silver Spur Road, Suite 207, Rolling Hills Estates, CA 90274 (9:30 a.m. to 5 p.m., Monday through Friday).

Submitting Comments: You may submit comments by one of the following methods:

- *Email: fw8cfwocomments@fws.gov;* please include ''City of RPV NCCP/HCP'' in the subject line.
- *U.S. Mail:* Karen Goebel, Attn: City of RPV NCCP/HCP (use the Carlsbad Fish and Wildlife Office address under *Obtaining Documents*).
- *Telephone:* Karen Goebel, 760–431–9440.

FOR FURTHER INFORMATION CONTACT: Mary Beth Woulfe, 760–431–9440.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), announce the recirculation of the draft Natural Community Conservation Plan/Habitat Conservation Plan (NCCP/HCP) and draft environmental assessment (draft EA), which evaluates the impacts of, and alternatives to, the proposed City of Rancho Palos Verdes (City of RPV) NCCP/HCP. We initially announced the availability of the City of RPV NCCP/HCP for review and comment on October 31, 2018, with a comment period that ended on December 31, 2018 (83 FR 54769). The recirculation is necessary to maximize public review because, while the document provided during the initial 60-day comment period was the document considered by the City of RPV Council at their March 29, 2018, Council Meeting, it did not include changes accepted by City of RPV Council via late correspondence at the Council Meeting, nor did it include technical and clarifying edits made after the Council Meeting. The City of RPV NCCP/HCP was submitted by the City of RPV in support of an application under section 10 of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), for a permit authorizing the incidental take of 10 covered species resulting from covered projects/activities and a permit under the State of California's Natural Community Conservation Planning Act of 2002. We request review and comment on the City of RPV NCCP/HCP and the draft EA from local, State, and Federal agencies; Tribes; and the public. The proposed City of RPV NCCP/HCP plan area is located on the Palos Verdes Peninsula, Los Angeles County, California.

Introduction

Under section 10(c) of the ESA and under the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*), this notice advises the public of the receipt and availability for public review of the draft City of RPV NCCP/HCP and draft EA, which evaluates the impacts of, and alternatives to, the City of RPV NCCP/HCP, submitted with an application for a permit to authorize the incidental take of federally listed covered species resulting from covered projects/activities within the plan area. The Service is the Lead Agency pursuant to NEPA. The proposed Federal action is issuance of an incidental take permit (ITP) under section 10(a)(1)(B) of the ESA to the City of Rancho Palos Verdes and their habitat manager, Palos Verdes Peninsula Land Conservancy.

Background

Section 9 of the ESA prohibits ''take'' of fish and wildlife species listed as endangered under section 4 (16 U.S.C. 1538, 1533, respectively). Section 10(a)(1)(B) of the ESA provides for the issuance of a permit for the taking of listed fish and wildlife species that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity (''incidental take''). The ESA implementing regulations extend, under certain circumstances, the prohibition of take to threatened species (50 CFR 17.31). Regulations governing permits for endangered and threatened species are at 50 CFR 17.22 and 17.32. For more about the HCP program, go to *http://www.fws.gov/endangered/esa-library/pdf/hcp.pdf.*

Under section 10(a) of the ESA, the Service may issue permits to authorize incidental take of listed fish and wildlife species. Section 10(a)(2)(B) of the ESA contains criteria for issuing ITPs to non-Federal entities for the take of endangered and threatened species, provided the following criteria are met:

- The taking will be incidental;
- The applicant will, to the maximum extent practicable, minimize and mitigate the impact of such taking;
- The applicant will develop an HCP and ensure that adequate funding for the plan will be provided;
- The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and
- The applicant will carry out any other measures that the Secretary may require as being necessary or appropriate for the purposes of the HCP.

Implementation of the City of RPV NCCP/HCP is intended to maximize conservation for covered species while providing cost-savings and reducing potential time-delays associated with processing individual ITPs for each covered project/activity within the plan area.

Proposed Action

The proposed action is the issuance of an ITP by the Service to City of Rancho Palos Verdes and their habitat manager, Palos Verdes Peninsula Land Conservancy, for the incidental take of covered species from identified covered projects/activities, including the avoidance, minimization, and mitigation of impacts to covered species within the 8,616.6-acre plan area for 40 years. The proposed City of RPV NCCP/HCP is a conservation plan for the following 10 species:

Federally Listed as Endangered

Palos Verdes blue butterfly (*Glaucopsyche lygdamus palosverdesensis*)
El Segundo blue butterfly (*Euphilotes battoides allyni*)

Federally Listed as Threatened

Coastal California gnatcatcher (*Polioptila californica californica*)

Unlisted

Cactus wren (*Campylorhynchus brunneicapillus*)
Aphanisma (*Aphanisma blitoides*)
South coast saltscale (*Atriplex pacifica*)
Catalina crossosoma (*Crossosoma californicum*)
Island green dudleya (*Dudleya virens* ssp. *insularis*)
Santa Catalina Island desert-thorn (*Lycium brevipes* var. *hassei*)

Woolly seablite (*Suaeda taxifolia*)

There are 17 City of Rancho Palos Verdes projects/activities and 5 private projects/activities proposed to be covered by the ITP. The City of Rancho Palos Verdes projects/activities include landslide abatement, drainage improvement, dewatering wells, road and canyon repairs, fuel modification, and maintenance; private projects/activities include development, remedial grading, and fuel modification. Public use is also identified as a conditionally allowable use. Potential impacts to covered species include disruption of normal behavior by covered projects/activities and injury or death due to construction activities. The City of RPV NCCP/HCP provides a comprehensive approach to the conservation and management of these species and their habitat within the plan area.

The plan area includes the entire boundary of the City of Rancho Palos Verdes. The plan area is constant for all of the alternatives analyzed in the draft EA. The City of RPV NCCP/HCP quantifies the expected loss of habitat and the proposed mitigation, including management and monitoring of the preserve.

Alternatives

We considered five alternatives in the draft EA: (1) No Action Alternative; (2) Alternative A, Peninsula NCCP Working Group Alternative; (3) Alternative B, Landowner Alternative; (4) Alternative C, The City of Rancho Palos Verdes' Alternative; and (5) Alternative D, The Proposed Action.

Under the No Action Alternative, the City of RPV NCCP/HCP would not move forward for approval and an ITP would not be issued. All projects/activities proposed in the City of RPV NCCP/HCP would continue to be reviewed in accordance with existing State land use and environmental regulations. Alternative A was developed by the working group, which consisted of stakeholders within the City of Rancho Palos Verdes, and included the largest preserve area, totaling about 1,559.1 acres. Alternative B was developed by the major landowners in 1999 and proposed the smallest preserve area of all of the alternatives. Alternative C was developed by the City of Rancho Palos Verdes and was a compromise of Alternative A and B. The preserve size under Alternative C is slightly larger than that under the Proposed Action (Alternative D), but the total amount of coastal sage scrub habitat under Alternative C is slightly lower than that in the Proposed Action (Alternative D).

The Proposed Action (Alternative D) is the same as Alternative C, with the following exceptions: (1) A 27.0-acre parcel in the Upper Filiorum property has been removed from the preserve and is now identified as a covered project, including the associated dedication of 30 acres of functional and connected habitat; (2) 40.0 acres of a former archery range property have been removed from the preserve due to landslide and legal constraints; and (3) 61.5 acres of Malaga Canyon have been purchased by the City of Rancho Palos Verdes and have been incorporated into the preserve. The preserve in Alternative D totals 1,402.4 acres.

Request for Comments

Consistent with section 10(c) of the ESA, we invite your submission of written comments, data, or arguments with respect to the City of Rancho Palos Verdes' permit application, the City of RPV NCCP/HCP, and proposed permitting decision.

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 that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may 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.

Next Steps

Issuance of an incidental take permit is a Federal proposed action subject to compliance with NEPA. We will evaluate the application, associated documents, and any public comments we receive to determine whether the application meets the requirements of section 10(a) of the ESA. If we determine that those requirements are met, we will issue a permit to the applicant for the incidental take of the covered species. We will make our final permit decision no sooner than 30 days after the public comment period closes.

Authority

We provide this notice under section 10(c) of the ESA (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22 and 17.32) and NEPA (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1506.6).

Scott Sobiech,

Acting Field Supervisor, Carlsbad Fish and Wildlife Office, Carlsbad, California.

[FR Doc. 2019–06501 Filed 4–3–19; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[190A2100DD/AAKC001030/A0A501010.999900 253G; OMB Control Number 1076–0020]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Loan Guarantee, Insurance and Interest Subsidy Program

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, Bureau of Indian Affairs (BIA) are proposing to renew an information collection with revisions.

DATES: Interested persons are invited to submit comments on or before May 6, 2019.

ADDRESSES: Send written comments on this information collection request (ICR) to the Office of Management and Budget's Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov;* or via facsimile to (202) 395–5806. Please provide a copy of your comments to James R. West, Office of Indian Energy and Economic Development, U.S. Department of the Interior, 1849 C Street NW, MIB 4138, Washington, DC 20240; email: *Jamesr.west@bia.gov.* Please reference OMB Control Number 1076–0020 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact James R. West by telephone at (202) 595–4766. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised,

and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on September 7, 2018 (83 FR 45461). No comments were received.

We are again soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the BIA; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the BIA enhance the quality, utility, and clarity of the information to be collected; and (5) how might the BIA minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: Submission of this information allows the Office of Indian Energy and Economic Development (IEED) to implement the Loan Guarantee, Insurance, and Interest Subsidy Program, 25 U.S.C. 1451 *et seq.,* the purpose of which is to encourage private lending to individual Indians and Indian organizations by providing lenders with loan guarantees or loan insurance to reduce their potential risk. The information collection allows IEED to determine the eligibility and credit-worthiness of respondents and loans and otherwise ensure compliance with Program requirements. This information collection includes the use of several forms. A response is required to obtain and/or retain a benefit.

Title of Collection: Loan Guarantee, Insurance, and Interest Subsidy.

OMB Control Number: 1076–0020.

Form Number: LGA10, LIA10, RGI10, ISR10, NOD10, CFL10, ALD10, NIL10, and LGC10.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: Lenders, including commercial banks, and borrowers, including individual Indians and Indian organizations.

Total Estimated Number of Annual Respondents: 622.

Total Estimated Number of Annual Responses: 1,377.

Estimated Completion Time per Response: Ranging from 0.5 to 2 hours.

Total Estimated Number of Annual Burden Hours: 2,654 hours.

Respondent's Obligation: Required to Obtain a Benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: $0.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Elizabeth K. Appel,

Director, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.

[FR Doc. 2019–06503 Filed 4–3–19; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[190A2100DD/AAKC001030/ A0A501010.999900 253G; OMB Control Number 1076–0141]

Agency Information Collection Activities; Renewal of Agency Information Collection for Water Request

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Bureau of Indian Affairs (BIA) are seeking comments on the renewal of Office of Management and Budget (OMB) approval for the collection of information for the updated Request for Irrigation Services authorized by OMB Control Number 1076–0141. The current information collection expires June 30, 2019. Supplementing the Request for Irrigation Services in this renewal of information collection are the Request for Customer Information, Annual Assessment Waiver, Incentive Agreement, and Land Classification/ Designation applications.

DATES: Interested persons are invited to submit comments on or before June 3, 2019.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to the Yulan Jin, Chief, Division of Water and Power, Office of Trust Services, Mail Stop 4655—MIB, 1849 C Street NW, Washington, DC 20240; telephone: (202) 219–0941; or by email to *yulan.jin@bia.gov.* Please reference OMB Control Number 1076–0141 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Yulan Jin by email at *yulan.jin@bia.gov,* or by telephone at (202) 219–0941.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the BIA; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the BIA enhance the quality, utility, and clarity of the information to be collected; and (5) how might the BIA minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The BIA owns, operates, and maintains 17 irrigation projects that

provide a service to the end user. To properly bill for the services provided, the BIA must collect customer information to identify the individual responsible for repaying the government the costs of delivering the service; determine eligibility for waiver of fees; and determine designation of irrigable lands as assessable or non-assessable. Additional information necessary for providing the service is the location of the service delivery and the number of serviced acres. The Debt Collection Improvement Act of 1996 (DCIA) requires that certain information be collected from individuals and businesses doing business with the government. This information includes the taxpayer identification number for possible future use to recover delinquent debt. To implement the DCIA requirement to collect customer information, the BIA has included a section concerning the collection of information in its regulations governing its irrigation projects (25 CFR 171).

Title of Collection: Water Request.

OMB Control Number: 1076–0141.

Form Number: BIA–DWP–Irr–101; BIA–DWP–Irr–102; BIA–DWP–Irr–103; BIA–DWP–Irr–104; BIA–DWP–Irr–105.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: Water users of BIA irrigation project—individual and businesses.

Total Estimated Number of Annual Respondents: 7,500.

Total Estimated Number of Annual Responses: 34,906.

Estimated Completion Time per Response: A range of 1 minute to 6 hours, depending on the specific service being requested.

Total Estimated Number of Annual Burden Hours: 17,943 hours.

Respondent's Obligation: Responses are required to receive or maintain a benefit.

Frequency of Collection: On occasion through the irrigation season, averaging approximately two times per year.

Total Estimated Annual Nonhour Burden Cost: $0.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*).

Elizabeth K. Appel,

Director, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.

[FR Doc. 2019–06504 Filed 4–3–19; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[190A2100DD/AAKC001030/ A0A501010.999900 253G; OMB Control Numbers 1076–0149, 1076–0152, and 1076–0158]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Class III Gaming Procedures, Tribal Revenue Allocation Plans, and Gaming on Trust Lands Acquired After October 17, 1988

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Assistant Secretary—Indian Affairs (AS–IA), are proposing to renew three information collections.

DATES: Interested persons are invited to submit comments on or before May 6, 2019.

ADDRESSES: Send written comments on this information collection request (ICR) to the Office of Management and Budget's Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov;* or via facsimile to (202) 395–5806. Please provide a copy of your comments to Ms. Paula Hart, U.S. Department of the Interior, Office of Indian Gaming, 1849 C Street NW, Mail Stop 3657, Washington, DC 20240; email: *indiangaming@bia.gov.* Please reference OMB Control Numbers 1076–0149, 1076–0152, and 1076–0158 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Ms. Paula Hart, U.S. Department of the Interior, Office of Indian Gaming, telephone: 202–219–4066. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on November 19, 2018 (83 FR 58280). No comments were received.

We are again soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the AS–IA; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the AS–IA enhance the quality, utility, and clarity of the information to be collected; and (5) how might the AS–IA minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The collection of information ensure that the provisions of the Indian Gaming Regulatory Act (IGRA) and other applicable requirements are met when federally recognized Tribes submit Class III procedures for review and approval by the Secretary of the Interior. Sections 291.4, 291.10, 291.12 and 291.15 of 25 CFR 291, Class III Gaming Procedures, specify the information collection requirement. An Indian Tribe must ask the Secretary to issue Class III gaming procedures. The information to be collected includes: The name of the Tribe, the name of the State, Tribal documents, State documents, regulatory schemes, the proposed procedures, and other documents deemed necessary.

Title of Collection: Class III Gaming Procedures.

OMB Control Number: 1076–0149.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Federally recognized Indian Tribes.

Total Estimated Number of Annual Respondents: 12.

Total Estimated Number of Annual Responses: 12.

Estimated Completion Time per Response: 320 hours.

Total Estimated Number of Annual Burden Hours: 3,840 hours.

Respondent's Obligation: Required to Obtain a Benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: $0.

* * * * *

Abstract: An Indian Tribe must ask the Secretary to approve a Tribal revenue allocation plan. In order for Indian Tribes to distribute net gaming revenues in the form of per capita payments, information is needed by the AS–IA to ensure that Tribal revenue allocation plans include: (1) Assurances that certain statutory requirements are met, (2) a breakdown of the specific uses to which net gaming revenues will be allocated, (3) eligibility requirements for participation, (4) tax liability notification, and (5) the assurance of the protection and preservation of the per capita share of minors and legal incompetents. Sections 290.12, 290.17, 290.24 and 290.26 of 25 CFR part 290, Tribal Revenue Allocation Plans, specify the information collection requirement. The information to be collected includes: The name of the Tribe, Tribal documents, the allocation plan, and other documents deemed necessary.

Title of Collection: Tribal Revenue Allocation Plans.

OMB Control Number: 1076–0152.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Federally recognized Indian Tribes.

Total Estimated Number of Annual Respondents: 20.

Total Estimated Number of Annual Responses: 20.

Estimated Completion Time per Response: 100 hours.

Total Estimated Number of Annual Burden Hours: 2,000 hours.

Respondent's Obligation: Required to Obtain a Benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: $0.

* * * * *

Abstract: The collection of information will ensure that the provisions of IGRA, Federal law, and the trust obligations of the United States are met when Federally recognized Tribes submit an application under 25 CFR part 292. The applications covered by this OMB Control No. are those seeking a secretarial determination that a gaming establishment on land acquired in trust after October 17, 1988, would be in the best interest of the Indian Tribe and its members, and would not be detrimental to the surrounding community.

Title of Collection: Gaming on Trust Lands Acquired After October 17, 1988.

OMB Control Number: 1076–0158.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Federally recognized Indian Tribes.

Total Estimated Number of Annual Respondents: 2.

Total Estimated Number of Annual Responses: 2.

Estimated Completion Time per Response: 1,000 hours.

Total Estimated Number of Annual Burden Hours: 2,000 hours.

Respondent's Obligation: Required to Obtain a Benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: $0.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*).

Elizabeth K. Appel,

Director, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.

[FR Doc. 2019–06614 Filed 4–3–19; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[190A2100DD/AAKC001030/ A0A501010.999900 253G; OMB Control Number 1076–0185]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Tribal Education Department Grant Program

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Bureau of Indian Education (BIE) are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before May 6, 2019.

ADDRESSES: Send written comments on this information collection request (ICR) to the Office of Management and Budget's Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov;* or via facsimile to (202) 395–5806. Please provide a copy of your comments to Maureen Lesky, 1011 Indian School Road NW, Suite 332, Albuquerque, NM 87104; or by email to *Maureen.Lesky@bie.edu.* Please reference OMB Control Number 1076–0185 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, Maureen Lesky by email at *Maureen.Lesky@bie.edu,* or by telephone at (505) 563–5397. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on October 24, 2018. *See* 83 FR 53655. A comment from the Muscogee (Creek) Nation was received. The BIE responded to the comment in the supporting statement but the feedback did not affect the burden estimates for the collection.

We are again soliciting comments on the proposed ICR that is described below. We are especially interested in public comments addressing the following issues: (1) Is the collection necessary to the proper functions of the BIE; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the BIE enhance the quality, utility, and clarity of the information to be collected; and (5) how might the BIE minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made

publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: Under 25 U.S.C. 2020, Congress appropriated funding through the BIE for the development and operation of Tribal departments or divisions of education for the purpose of planning and coordinating all educational programs of the Tribe. All Tribal education departments (TEDs) awarded will provide coordinating services and technical assistance to the school(s) they serve. As required under 25 U.S.C. 2020, for a federally recognized Tribe to be eligible to receive a grant, the Tribe must submit a grant application proposal. Once the grant has been awarded, each awardee will be responsible for quarterly and annual reports. All awardees must comply with regulations relating to grants made under 25 U.S.C. 5322(a).

Title of Collection: Tribal Education Department Grant Program.

OMB Control Number: 1076–0185.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Federally recognized Tribes and their Tribal Education Departments (TEDs).

Total Estimated Number of Annual Respondents: 33.

Total Estimated Number of Annual Responses: 63.

Estimated Completion Time per Response: Varies from 2 to 81 hours.

Total Estimated Number of Annual Burden Hours: 1,113.

Respondent's Obligation: Required to Obtain or Retain a Benefit.

Frequency of Collection: Yearly for the proposal and annual report, quarterly for the quarterly reports.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*).

Elizabeth K. Appel,

Director, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.

[FR Doc. 2019–06613 Filed 4–3–19; 8:45 am]

BILLING CODE 4337–15–P

NATIONAL INDIAN GAMING COMMISSION

Notice of Approved Class III Tribal Gaming Ordinances

AGENCY: National Indian Gaming Commission.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public of Class III tribal gaming ordinances approved by the Chairman of the National Indian Gaming Commission.

DATE: This notice is effective upon date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Frances Fragua, Office of General Counsel at the National Indian Gaming Commission, 202–632–7003, or by facsimile at 202–632–7066 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act (IGRA) 25 U.S.C. 2701 *et seq.,* established the National Indian Gaming Commission (Commission). Section 2710 of IGRA authorizes the Chairman of the Commission to approve Class II and Class III tribal gaming ordinances. Section 2710(d)(2)(B) of IGRA, as implemented by NIGC regulations, 25 CFR 522.8, requires the Chairman to publish, in the **Federal Register**, approved Class III tribal gaming ordinances and the approvals thereof.

IGRA requires all tribal gaming ordinances to contain the same requirements concerning tribes' sole proprietary interest and responsibility for the gaming activity, use of net revenues, annual audits, health and safety, background investigations and licensing of key employees and primary management officials. The Commission, therefore, believes that publication of each ordinance in the **Federal Register** would be redundant and result in unnecessary cost to the Commission.

Thus, the Commission believes that publishing a notice of approved Class III tribal gaming ordinances in the **Federal Register**, is sufficient to meet the requirements of 25 U.S.C. 2710(d)(2)(B). Every approved tribal gaming ordinance, every approved ordinance amendment, and the approval thereof, are posted on the Commission's website (*www.nigc.gov*) under General Counsel, Gaming Ordinances. Also, the Commission will make copies of approved Class III ordinances available to the public upon request. Requests can be made in writing to the Office of General Counsel, National Indian Gaming Commission, Attn: Frances Fragua, C/O Department of the Interior, 1849 C Street NW, MS #1621, Washington, DC 20240.

The following constitutes a consolidated list of all Tribes for which the Chairman has approved tribal gaming ordinances authorizing Class III gaming.

1. Absentee-Shawnee Tribe of Indian of Oklahoma
2. Agua Caliente Band of Cahuilla Indians
3. Ak-Chin Indian Community of the Maricopa Indian Reservation
4. Alabama-Quassarte Tribal Town
5. Alturas Indian Rancheria
6. Apache Tribe of Oklahoma
7. Assiniboine & Sioux Tribes of Fort Peck Indian Reservation
8. Augustine Band of Cahuilla Indians
9. Bad River Band of Lake Superior Tribe of Chippewa Indians
10. Barona Group of Captain Grande Band of Mission Indians
11. Bay Mills Indian Community
12. Bear River Band of Rohnerville Rancheria
13. Berry Creek Rancheria of Tyme Maidu Indians
14. Big Lagoon Rancheria
15. Big Pine Band of Owens Valley Paiute Shoshone Indians
16. Big Sandy Rancheria Band of Western Mono Indians
17. Big Valley Band of Pomo Indians
18. Bishop Paiute Tribe
19. Blackfeet Tribe
20. Blue Lake Rancheria of California
21. Bois Forte Band of the Minnesota Chippewa Tribe
22. Bueno Vista Rancheria of Me-Wuk Indians
23. Burns Paiute Tribe
24. Cabazon Band of Mission Indians
25. Cachil DeHe Band of Wintun Indians of the Colusa Indian Community
26. Caddo Nation of Oklahoma
27. Cahto Indian Tribe of the Laytonville Rancheria
28. Cahuilla Band of Mission Indians
29. California Valley Miwok Tribe
30. Campo Band of Diegueno Mission Indians
31. Chemehuevi Indian Tribe
32. Cher-Ae Heights Indian Community of the Trinidad Rancheria
33. Cherokee Nation of Oklahoma
34. Cheyenne and Arapahoe Tribes
35. Cheyenne River Sioux Tribe
36. Chickasaw Nation of Oklahoma
37. Chicken Ranch Rancheria of Me-Wuk Indians
38. Chippewa-Cree Tribe of the Rocky Boy's Reservation
39. Chitimacha Tribe of Louisiana
40. Choctaw Nation of Oklahoma
41. Citizen Potawatomi Nation
42. Cloverdale Rancheria of Pomo Indians

43. Cocopah Indian Tribe
44. Coeur d'Alene Tribe
45. Colorado River Indian Tribes
46. Comanche Nation of Oklahoma
47. Confederated Salish and Kootenai Tribes of the Flathead Reservation
48. Confederated Tribes and Bands of the Yakama Nation
49. Confederated Tribes of Coos, Lower Umpquq and Siuslaw Indians of Oregon
50. Confederated Tribes of the Chehalis Reservation
51. Confederated Tribes of the Colville Reservation
52. Confederated Tribes of the Grand Ronde Community of Oregon
53. Confederated Tribes of Siletz Indians of Oregon
54. Confederated Tribes of the Umatilla Reservation
55. Confederated Tribes of the Warm Springs Reservation
56. Coquille Indian Tribe
57. Coushatta Tribe of Louisiana
58. Cow Creek Band of Umpqua Indians of Oregon
59. Cowlitz Indian Tribe
60. Coyote Valley Band of Pomo Indians of California
61. Crow Creek Sioux Tribe
62. Crow Indian Tribe of Montana
63. Delaware Tribe of Western Oklahoma
64. Delaware Tribe of Indians
65. Dry Creek Rancheria of Pomo Indians of California
66. Eastern Band of Cherokee Indians
67. Eastern Shawnee Tribe of Oklahoma
68. Eastern Shoshone Tribe of the Wind River Indian Reservation
69. Elem Indian Colony of Pomo Indians
70. Elk Valley Rancheria
71. Ely Shoshone Tribe of Nevada
72. Enterprise Rancheria of the Maidu Indians of California
73. Ewiiaapaayp Band of Kumeyaay Indians
74. Fallon Paiute-Shoshone Tribes
75. Federated Indians of Graton Rancheria
76. Flandreau Santee Sioux Tribe of South Dakota
77. Fond du Lac Band of Lake Superior Chippewa
78. Forest County Potawatomi Community
79. Fort Belknap Indian Community
80. Fort Independence Indian Community of Paiute Indians
81. Fort McDermitt Paiute -Shoshone Tribe of Nevada and Oregon
82. Fort McDowell Yavapai Nation
83. Fort Mojave Indian Tribe of Arizona, California and Nevada
84. Fort Sill Apache Tribe of Oklahoma
85. Gila River Indian Community
86. Grand Portage Band of Chippewa Indians
87. Grand Traverse Band of Ottawa and Chippewa Indians
88. Greenville Rancheria of Maidu Indians of California
89. Grindstone Indian Rancheria of Wintun-Wailaki Indians of California
90. Guildiville Band of Pomo Indians
91. Habermatolel Pomo of Upper Lake
92. Hannaville Indian Community
93. Ho-Chunk Nation of Wisconsin
94. Hoopa Valley Tribe
95. Hopland Band of Pomo Indians
96. Hualapai Indian Tribe
97. Iipay Nation of Santa Ysabel of California
98. Iowa Tribe of Kansas and Nebraska
99. Iowa Tribe of Oklahoma
100. Jackson Rancheria Band of Miwuk Indians
101. Jamestown S'Klallam Tribe of Washington
102. Jamul Band of Mission Indians
103. Jena Band of Choctaw Indians
104. Jicarilla Apache Nation
105. Kaibab Band of Paiute Indians
106. Kalispel Tribe of Indians
107. Karuk Tribe
108. Kaw Nation
109. Keweenaw Bay Indian Community
110. Kialegee Tribal Town
111. Kickapoo Tribe of Indians in Kansas
112. Kickapoo Tribe of Oklahoma
113. Kiowa Tribe of Oklahoma
114. Klamath Tribes
115. Klawock Cooperative Association
116. Kootenai Tribe of Idaho
117. Lac Courte Oreilles Band of Lake Superior Chippewa Indians
118. Lac du Flambeau Band of Lake Superior Chippewa Indians
119. Lac Vieux Desert Band of Lake Superior Chippewa Indians
120. La Jolla Band of Luiseno Indians
121. La Posta Band of Mission Indians
122. Las Vegas Paiute Tribe
123. Leech Lake Band of Chippewa Indians
124. Little River Band of Ottawa Indians
125. Little Traverse Bay Bands of Odawa Indians
126. Lower Brule Sioux Tribe
127. Lower Elwha Klallam Tribe
128. Lower Sioux Indian Community
129. Lummi Indian Tribe
130. Lytton Rancheria of California
131. Manchester Band of Pomo Indians of the Manchester-Point Arena Rancheria
132. Manzanita Band of Mission Indians
133. Mashantucket Pequot Tribe
134. Match-E-Be-Nash-She-Wish Band of the Potawatomi Indians of Michigan
135. Mechoopda Indian Tribe of Chico Rancheria
136. Menominee Indian Tribe of Wisconsin
137. Mescalero Apache Tribe
138. Miami Tribe of Oklahoma
139. Middletown Rancheria of Pomo Indians
140. Mille Lacs Band of Ojibwe
141. Mississippi Band of Choctaw Indians
142. Moapa Band of Paiute Indians
143. Modoc Tribe of Oklahoma
144. Mohegan Indian Tribe of Connecticut
145. Mooretown Rancheria of Maidu Indians
146. Morongo Band of Mission Indians
147. Mucketshoot Indian Tribe
148. Muscogee (Creek) Nation
149. Narragansett Indian Tribe
150. Navajo Nation
151. Nez Perce Tribe
152. Nisqually Indian Tribe
153. Nooksack Indian Tribe
154. Northern Arapaho Tribe of the Wind River Indians
155. Northern Cheyenne Tribe
156. Nottawaseppi Huron Band of Potawatomi
157. Oglala Sioux Tribe
158. Ohkay Owingeh Pueblo of San Juan
159. Omaha Tribe of Nebraska
160. Oneida Nation of New York
161. Oneida Tribe of Indians of Wisconsin
162. Osage Nation
163. Otoe-Missouri Tribe of Indians
164. Ottawa Tribe of Oklahoma
165. Paiute-Shoshone Indians of the Bishop Community
166. Pala Band of Luiseno Mission Indians
167. Pascua Yaqui Tribe of Arizona
168. Paskenta Band of Nomlaki Indians
169. Pauma Band of Mission Indians
170. Pawnee Nation of Oklahoma
171. Pechanga Band of Mission Indians
172. Peoria Tribe of Indians of Oklahoma
173. Picayune Rancheria of Chukchansi Indians
174. Pinoleville Band of Pomo Indians
175. Pit River Tribe
176. Poarch Band Creek Indians
177. Pokagon Band of Potawatomi Indians of Michigan
178. Ponca Tribe of Oklahoma
179. Ponca Tribe of Nebraska
180. Port Gamble S'Klallam Tribe
181. Prairie Band of Potawatomi Nation
182. Prairie Island Indian Community
183. Pueblo of Acoma
184. Pueblo of Isleta
185. Pueblo of Laguna
186. Pueblo of Nambe
187. Pueblo of Picuris
188. Pueblo of Pojoaque
189. Pueblo of San Felipe
190. Pueblo of Sandia
191. Pueblo of Santa Ana
192. Pueblo of Santa Clara
193. Pueblo of Taos

194. Pueblo of Tesuque
195. Puyallup Tribe of Indians
196. Pyramid Lake Paiute Tribe
197. Quapaw Tribe of Indians
198. Quartz Valley Indian Community
199. Quechan Tribe of Fort Yuma Indian Reservation
200. Quileute Tribe
201. Quinault Indian Nation
202. Red Cliff Band of Lake Superior Chippewa Indians
203. Red Cliff, Sokaogon Chippewa and Lac Courte Oreilles Band
204. Red Lake Band of Chippewa Indians
205. Redding Rancheria
206. Redwood Valley Rancheria of Pomo Indians
207. Reno-Sparks Indian Colony
208. Resighini Rancheria of Coast Indian Community
209. Rincon Band of Luiseno Mission Indians
210. Robinson Rancheria of Pomo Indians
211. Rosebud Sioux Tribe
212. Round Valley Indian Tribe
213. Sac & Fox Nation of Oklahoma
214. Sac & Fox Tribe of Mississippi in Iowa
215. Sac & Fox Nation of Missouri in Kansas and Nebraska
216. Saginaw Chippewa Indian Tribe of Michigan
217. Salt River Pima-Maricopa Indian Community
218. Samish Indian Tribe
219. San Carlos Apache Tribe
220. San Manual Band of Mission Indians
221. San Pasqual Band of Diegueno Mission Indians
222. Santa Rosa Rancheria Tachi-Yokut Tribe
223. Santa Ynez Band of Chumash Mission Indians
224. Sauk-Suiattle Indian Tribe
225. Sault Ste. Marie Tribe of Chippewa Indians
226. Scotts Valley Band of Pomo Indians
227. Seminole Nation of Oklahoma
228. Seminole Tribe of Florida
229. Seneca Nation of Indians of New York
230. Seneca-Cayuga Tribe of Oklahoma
231. Shakopee Mdewakanton Sioux Community
232. Shawnee Tribe
233. Sherwood Valley Rancheria of Pomo Indians
234. Shingle Springs Band of Miwuk Indians
235. Shoalwater Bay Indian Tribe
236. Shoshone-Bannock Tribes of the Fort Hall Indian Reservation of Idaho
237. Shoshone-Paiute Tribe of the Duck Valley Indian Reservation
238. Sisseton-Wahpeton Oyate of the Lake Traverse Reservation
239. Skokomish Indian Tribe
240. Smith River Rancheria
241. Snoqualmie Tribe
242. Soboba Band of Luiseno Indians
243. Sokaogon Chippewa Community
244. Southern Ute Indian Tribe
245. Sprite Lake Tribe
246. Spokane Tribe of Indians
247. Squaxin Island Tribe
248. St. Croix Chippewa Indians of Wisconsin
249. St. Regis Mohawk Tribe
250. Standing Rock Sioux Tribe
251. Stillaguamish Tribe of Indians
252. Stockbridge-Munsee Community
253. Suquamish Tribe of the Port Madison Reservation
254. Susanville Indian Rancheria
255. Swinomish Indian Tribal Community
256. Sycuan Band of Diegueno Mission Indians
257. Table Mountain Rancheria
258. Te-Moak Tribe of Western Shoshone Indians of Nevada
259. Thlopthlocco Tribal Town
260. Three Affiliated Tribes of the Fort Berthold Reservation
261. Timbisha Shoshone Tribe
262. Tohono O'odham Nation
263. Tolowa Dee-ni' Nation
264. Tonkawa Tribe of Oklahoma
265. Tonto Apache Tribe
266. Torres Martinez Desert Cahuilla Indians
267. Tulalip Tribes of Washington
268. Tule River Tribe
269. Tunica-Biloxi Indians of Louisiana
270. Tuolumne Band of Me-Wuk Indians
271. Turtle Mountain Band of Chippewa Indians
272. Twenty-Nine Palms Band of Mission Indians
273. United Auburn Indian Community
274. Upper Sioux Community
275. Upper Skagit Indian Tribe of Washington
276. Ute Mountain Ute Tribe
277. U-tu-Utu-Gwaitu Paiute Tribe of Benton Paiute Reservation
278. Viejas Band of Kumeyaay Indians
279. Washoe Tribe of Nevada and California
280. White Earth Band of Chippewa Indians
281. White Mountain Apache Tribe
282. Wichita and Affiliated Tribes of Oklahoma
283. Winnebago Tribe of Nebraska
284. Wiyot Tribe of Table Bluff Reservation
285. Wyandotte Nation of Oklahoma
286. Yankton Sioux Tribe
287. Yavapai Apache Nation of the Camp Verde Indian Reservation
288. Yavapai-Prescott Indian Tribe
289. Yocha-De-He Wintun Nation
290. Yurok Tribe

National Indian Gaming Commission.

Jonodev Chaudhuri,

Chairman.

Kathryn Isom-Clause,

Vice Chair.

E. Sequoyah Simermeyer,

Associate Commissioner.

[FR Doc. 2019–06566 Filed 4–3–19; 8:45 am]

BILLING CODE 7565–01–P

INTERNATIONAL TRADE COMMISSION

Miscellaneous Tariff Bill Petition System; Proposed Information Collection; Comment Request; Miscellaneous Tariff Bill Petition Submission and Comment Forms

AGENCY: United States International Trade Commission.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1995, the U.S. International Trade Commission (Commission) hereby gives notice that it plans to submit a request for approval of two forms to the Office of Management and Budget (OMB) for review and requests public comment on its draft proposed collection.

DATES: To ensure consideration, written comments must be submitted on or before June 3, 2019.

ADDRESSES: All Commission offices, including the Commission's hearing rooms, are located in the United States International Trade Commission Building, 500 E Street SW, Washington, DC. All written comments should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436 and filed electronically on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

Written Comments: You may submit comments, identified by docket number MISC–034. All submissions should be addressed to the Secretary and must conform to the provisions of section 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8). Section 201.8 and the Commission's Handbook on Filing Procedures require that interested parties file documents electronically on or before the filing deadline. Persons with questions regarding electronic filing should contact the Office of the Secretary, Docket Services Division (202–205–1802).

Additional Information: Copies of the forms, supporting documents, and previously submitted comments may be downloaded from the Commission website at *https://www.usitc.gov/*

mtbpscomments. For any questions about these documents, email *mtbinfo@usitc.gov* or call Jennifer Rohrbach, USITC MTB Program Manager (202–205–2088). Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its website (*https://www.usitc.gov*).

Purpose of Information Collection: The information requested by these forms is for use by the Commission in connection with its evaluation of miscellaneous tariff bill petitions submitted under the American Manufacturing Competitiveness Act of 2016 (the Act) (Pub. L. 114–159, approved May 20, 2016). Section 3 of the Act establishes a process for the submission and consideration of petitions for, and public comments on, duty suspensions and reductions for imported goods. The Act requires the Commission to conduct two petition submission cycles. One such cycle, now completed, was conducted beginning in October 2016. The cycle that is the subject of this notice begins not later than October 15, 2019.

Summary of Proposal:

(1) *Number of forms submitted:* 2.

(2) *Title of forms:* Miscellaneous Tariff Bill Petition Submission Form and Miscellaneous Tariff Bill Petition Comment Form;

(3) *Type of request:* Extension of approval for a collection of information.

(4) *Frequency of use:* Once.

(5) *Description of affected industry:* Domestic firms.

(6) *Estimated number of petitioners and commenters:* up to 5,000 petitions; 3,000 comments.

(7) *Estimated total number of hours to complete the forms:* 5 hours for compiling information and submitting petitions and 0.5 hours to draft and submit comments.

(8) Information obtained from the forms that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

SUPPLEMENTARY INFORMATION:

I. Abstract

Tariff categories and duty rates on imported goods are established by Congress and set out in the Harmonized Tariff Schedule of the United States (HTS). Temporary duty suspensions and reductions are set forth in chapter 99, subchapter II of the HTS.

The Act referenced above requires the Commission to establish a process to receive petitions for temporary duty suspensions and reductions, and specifies the contents of such petitions. The Act also provides that these petitions must be made available on the Commission's website for public review and comment. The Act specifies the information that the Commission must include in its preliminary and final reports to the House Committee on Ways and Means and the Senate Committee on Finance (Committees), including certain determinations the Commission must make concerning the petitions filed. While the Act only requires that the Commission provide one public comment period, the Commission may provide additional opportunity for public comment if deemed appropriate.

The Act specifies the schedule for conducting each of the two cycles for collection of petitions. The first cycle commenced on October 14, 2016, and the Commission delivered its final report to the Committees on the submitted petitions on August 8, 2017. This notice concerns the second petition submission cycle, which must start not later than October 15, 2019.

II. Method of Collection

Each interested party will be required to establish a user web account on the Commission's designated website, the Miscellaneous Tariff Bill Petition System (MTBPS), to submit a petition requesting the extension or establishment of a temporary duty suspension or reduction provision in the HTS. Similarly, each interested party will be required to establish a user web account on MTBPS to submit a comment on received petitions.

III. Request for Comments

Comments are invited on (1) whether the proposed collection of information is necessary; (2) the accuracy of the agency's estimate of the burden (including hours and cost) 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 other forms of information technology.

The draft forms and other supplementary documents may be downloaded from the USITC website at *https://www.usitc.gov/mtbpscomments.*

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

By order of the Commission.

Issued: April 1, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–06600 Filed 4–3–19; 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—Cooperative Research Group on HEDGE IV

Notice is hereby given that, on March 11, 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''), Southwest Research Institute—Cooperative Research Group on HEDGE IV (''HEDGE IV'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Tenneco Automotive Operating Company, Inc., Grass Lake, MI, 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 HEDGE IV intends to file additional written notifications disclosing all changes in membership.

On February 14, 2017, HEDGE IV, 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 27, 2017 (82 FR 15238).

The last notification was filed with the Department on January 28, 2019. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on February 28, 2019 (84 FR 6820).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2019–06543 Filed 4–3–19; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cooperative Research Group on ROS-Industrial Consortium Americas

Notice is hereby given that, on March 11, 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''), Southwest Research Institute—Cooperative Research Group on ROS-Industrial Consortium-Americas (''RIC-Americas'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Spirit AeroSystems, Inc., Wichita, KS, has been added 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 RIC-Americas intends to file additional written notifications disclosing all changes in membership.

On April 30, 2014, RIC-Americas 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 June 9, 2014 (79 FR 32999).

The last notification was filed with the Department on January 31, 2019. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on February 28, 2019 (84 FR 6820).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2019–06547 Filed 4–3–19; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—The Open Group, LLC

Notice is hereby given that, on March 4, 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''), The Open Group, LLC (''TOG'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Amazon Web Services, Inc., Seattle, WA; Australian Postal Corporation, Melbourne, AUSTRALIA; AXA GIE, Paris, FRANCE; BAE Systems and Controls, Inc., Endicott, NY; Bluware, Inc., Houston, TX; BS GRUPO S.A.C., Arequipa, PERU; CACI International, Inc., Proving Ground, MD; Dept of Pharmacology, School of Medicine, Keio University, Tokyo, JAPAN; DRS Signal Solutions, Inc., Germantown, MD; EACIT LLC, Cypress, TX; Energistics Consortium, Inc., Houston, TX; Focus People s.r.o., Senov, CZECH REPUBLIC; Great Software Laboratory Private Limited, Pune, INDIA; INNOSEC Ltd., Hod Hasharon, ISRAEL; Interactive Network Technologies, Inc., Houston, TX; IT Management and Governance, LLC, Falls Church, VA; Kearfott Corporation, Little Falls, NJ; Lead Dog Technologies, Lindon, UT; LGS Innovations, Westminster, CO; Milpower Source Inc., Belmont, NY; MooD International Software, York, UNITED KINGDOM; Paradigm Geophysical Corporation, Houston, TX; Petróleo Brasileiro S.A.-PETROBRAS, Rio de Janeiro, BRAZIL; PLCopen, Gorinchem, THE NETHERLANDS; Qumulo, Inc., Seattle, WA; Schlumberger Oilfield UK Plc, Gatwick, UNITED KINGDOM; SRC, Inc., N. Syracuse, NY; Target Energy Solutions, Woking, UNITED KINGDOM; TechnipFMC plc, Houston, TX; and TOGETHER Business & Consulting S.r.l., Pilar, ARGENTINA, have been added as parties to this venture.

Also, American Express, Phoenix, AZ; ARISOME, Saint Cloud, FRANCE; Athr IT Consulting, Riyadh, SAUDI ARABIA; Booz Allen Hamilton, Linthicum, MD; Cognoscenti Systems, L.L.C., Baltimore, MD; Elparazim, Aurora, TX; Forefront Consulting Group, Stockholm, SWEDEN; General Electric, Niskayuna, NY; Inductive Automation, LLC, Folsom, CA; INOVA Europe, Inc., Dallas, TX; Network Centric Operations Industry Consortium, Newport Beach, CA; Northern Technologies Group, Tampa, FL; Oxford Brookes University, Oxford, UNITED KINGDOM; Slnee Company, Nassim City, SAUDI ARABIA; StackFrame, LLC, Sanford, FL; and US Department of Defense Office of the CIO, Washington, DC, have withdrawn as parties to this venture.

In addition, Georgia Institute of Technology has changed its name to Board of Regents of the University System of Georgia by and on behalf of the Georgia Institute of Technology, Atlanta, GA; Rockwell Collins to Collins Aerospace, Cedar Rapids, IA; and Voith Digital Solutions GmbH to J.M. Voith SE & Co, KG/DSG, Heidenheim, GERMANY.

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 TOG intends to file additional written notifications disclosing all changes in membership.

On April 21, 1997, TOG 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 June 13, 1997 (62 FR 32371).

The last notification was filed with the Department on December 10, 2018. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on December 19, 2018 (83 FR 65181).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2019–06546 Filed 4–3–19; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—ASTM International Standards

Notice is hereby given that on February 19, 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''), ASTM International (''ASTM'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. 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, ASTM has provided an updated list of current, ongoing ASTM activities originating between December 10, 2018 and February 7, 2019 designated as Work Items. A complete listing of ASTM Work Items, along with a brief description of each, is available at *http://www.astm.org.*

On September 15, 2004, ASTM 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 November 10, 2004 (69 FR 65226).

The last notification with the Department was filed on December 12, 2018. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on February 15, 2019 (84 FR 4537).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2019–06544 Filed 4–3–19; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—IMS Global Learning Consortium, Inc.

Notice is hereby given that, on March 11, 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''), IMS Global Learning Consortium, Inc. (''IMS Global'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Aspire/Ability Inc., Payson, UT; Austin Independent School District, Austin, TX; Bibb County School District, Macon, GA; North Allegheny School District, Pittsburgh, PA; Panopto, Pittsburgh, PA; and PowerSchool Group LLC, Folsom, CA, have been added as parties to this venture.

Also, Japan Electronic Publishing Association, Tokyo, JAPAN; Classlink, Clifton, NJ; Cobb County School District, Smyrna, GA; ASU Prep Digital, Tempe, AZ; ADL, Herndon, VA; Artificial Intelligence Laboratory, University of Seoul, Seoul, REPUBLIC OF KOREA; Learning Objects, Washington, DC; Infinitas, Houten, NETHERLANDS; String Theory Schools, Philadelphia, PA; and Intellify, Boston, MA, have withdrawn as parties to this venture.

In addition, Online Education Center of OUJ has changed its name to Open University of Japan, Chiba, JAPAN.

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 IMS Global intends to file additional written notifications disclosing all changes in membership.

On April 7, 2000, IMS Global 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 September 13, 2000 (65 FR 55283).

The last notification was filed with the Department on December 17, 2018. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on January 31, 2019 (84 FR 795).

Suzanne Morris,

Chief, Premerger and Division, Statistics Unit, Antitrust Division.

[FR Doc. 2019–06545 Filed 4–3–19; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF LABOR

Employment and Training Administration

Allocating Grants to States for Reemployment Services and Eligibility Assessments (RESEA) and Determining Outcome Payments in Accordance With Title III, Section 306 of the Social Security Act

AGENCY: Office of Unemployment Insurance (OUI), Employment and Training Administration (ETA), Department of Labor (DOL).

ACTION: Request for public comment.

SUMMARY: The Bipartisan Budget Act of 2018, Public Law 115–123 (BBA), established permanent authorization for the RESEA program by adding Section 306 to Title III of the Social Security Act (SSA). DOL is seeking state and public comments/suggestions pursuant to Section 306(f)(4), SSA, on how to allocate base funds for the RESEA program, as provided under Section 306(f)(1), SSA, and outcome payments, as provided under Section 306(f)(2), SSA.

DATES: Consideration will be given to all written comments received by May 6, 2019.

ADDRESSES: Questions on this notice and responsive comments related to RESEA program funding allocation can be submitted to the U.S. Department of Labor, Employment and Training Administration, Office of Unemployment Insurance, 200 Constitution Avenue NW, Room S–4524, Washington, DC 20210, Attention: Lawrence Burns, or by email at *DOL-ETA-UI-FRN@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Lawrence Burns, Division of Unemployment Insurance Operations, at 202–693–3141 (this is not a toll-free number), TTY 1–877–889–5627 (this is not a toll-free number), or by email at *Burns.Lawrence@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The federal-state Unemployment Insurance (UI) program is a required partner in the comprehensive, integrated workforce system. Individuals who have lost employment due to a lack of suitable work and have earned sufficient wage credits may receive UI benefits if they meet initial and continuing eligibility requirements. Since 2005, DOL and participating state workforce agencies have been addressing individual reemployment needs of UI claimants and working to prevent and detect UI improper payments through the voluntary UI Reemployment and Eligibility Assessment (REA) program and, beginning in fiscal year (FY) 2015, through the voluntary RESEA program.

On February 9, 2018, the President signed the BBA, which included amendments to the SSA creating a permanent authorization for the RESEA program. These RESEA provisions are contained in Section 30206 of the BBA, enacting new Section 306 of the SSA. Section 306 also contains provisions for funding the RESEA program.

The primary goals for the RESEA program are to: Improve employment outcomes for individuals that receive unemployment compensation (UC) and to reduce average duration of receipt of UC through employment; strengthen program integrity and reduce improper payments; promote alignment with the broader vision of the Workforce Innovation and Opportunity Act (WIOA), which is increased program integration and service delivery for job seekers; and establish RESEA as an entry point to other workforce system partner programs for individuals receiving UC. Core components of RESEA that must be included as part of the initial session with a claimant are:

- UI eligibility assessment, including review of work search activities, and referral to adjudication, as appropriate, if an issue or potential issue is identified;
- Providing labor market and career information that address the claimant's specific needs;
- Enrollment in Wagner-Peyser Act funded Employment Services;

• Providing support to the claimant to develop and implement an individual reemployment plan; and

• Providing information and access to American Job Center services and providing referrals to reemployment services and training, as appropriate, to support the claimant's return to work.

In FY 2018, a total of 51 states and jurisdictions operated a RESEA program.

II. Background

Of amounts appropriated for RESEAs, the BBA specifies three uses and designates the proportion of annual appropriations to be assigned to these uses: (1) Base funding (84 percent to 89 percent depending on the year) for states to operate the RESEA program, (2) outcome payments (10 percent to 15 percent of the appropriation depending on the year) designed to reward states meeting or exceeding certain criteria, and (3) up to one percent for the Secretary of Labor to use for research and technical assistance to states. With respect to the base funding, Section 306(f)(1)(A), SSA, states:

In general.—For each fiscal year after fiscal year 2020, the Secretary shall allocate a percentage equal to the base funding percentage [1] for such fiscal year of the funds made available for grants under this section among the States awarded such a grant for such fiscal year using a formula prescribed by the Secretary based on the rate of insured unemployment (as defined in section 203(e)(1) of the federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note)) in the State for a period to be determined by the Secretary. In developing such formula with respect to a State, the Secretary shall consider the importance of avoiding sharp reductions in grant funding to a State over time.

III. Proposed Base Funding Methodology

DOL is focused on developing a base funding formula that is relatively simple to understand; uses the state's insured unemployment rate (IUR) as the starting input variable, as required by law; incorporates other easily obtainable data; and is fair and equitable to state agencies in its application. After considering several options, DOL believes the approach that best satisfies the above-stated objectives is one that converts the states' IUR into a measure of new beneficiaries. New beneficiaries, or claimants establishing new benefit years and receiving first payments, reflect newly unemployed claimants and encompasses the target population served by RESEAs.

The proposed formula multiplies the IUR for the 12-month period ending June 30 preceding the fiscal year for which funding is to be allocated by the average covered employment used to calculate a state's IUR during the same period. The resulting insured unemployment levels are then multiplied by 52 and divided by the ratio of weeks claimed to first payments. Each state's proportion of total first payments for all states is then multiplied by the amount appropriated for base funding grants. The result is the amount that DOL will make available to the state as its base funding grant subject to the possible modifications described below.

The statutory language requires the Secretary to ''consider the importance of avoiding sharp reductions in grant funding to a state over time.'' To satisfy this requirement, DOL proposes a hold-harmless provision similar to that used for base allocations for UI administration (*i.e.,* no state's funding will be reduced from one fiscal year to the next by more than five percent, with the resources needed to prevent sharper declines obtained by reducing funding to those states gaining the most in the calculation).

Finally, while attempting to distribute resources sufficient to administer one 12-month period's level of RESEA activity and recognizing that the statutory language appropriating these funds allows for obligation beyond the fiscal year in which they are appropriated, DOL is proposing to permit carry over balances of 25 percent from one year to the next. State agencies carrying over amounts in excess of 25 percent will have the excess amount reduced from the subsequent year's allocation, and those additional resources will be included in the distribution to states that are under the 25 percent threshold.

IV. Outcome Payments

Section 306(f)(2)(A), SSA, requires DOL to make ''outcome payments'' to states that meet or exceed the outcome goals for reducing the average duration of receipt of UC by improving employment outcomes. Specifically, 306(f)(2)(A) states:

IN GENERAL.—Of the amounts made available for grants under this section for each fiscal year after 2020, the Secretary shall reserve a percentage equal to the outcome reservation percentage [2] for such fiscal year for outcome payments to increase the amount otherwise awarded to a State under paragraph (1). Such outcome payments shall be paid to States conducting reemployment services and eligibility assessments under this section that, during the previous fiscal year, met or exceeded the outcome goals provided in subsection (b)(1) related to reducing the average duration of receipt of unemployment compensation by improving employment outcomes.

The referenced subsection (b)(1) states that one of the goals of the program is ''[t]o improve employment outcomes of individuals that receive unemployment compensation and to reduce the average duration of receipt of such compensation through employment.''

DOL will publish a separate **Federal Register** Notice (FRN) proposing RESEA performance measures that will be used to determine eligibility for outcome payments. These measures will be based on the data sources identified below. It is DOL's intent to distribute funds reserved for outcome payments to eligible states using the same formula methodology applied to the base funding.

It is also DOL's intent to continue current RESEA data collections, including the ETA 9128, *Reemployment Services and Eligibility Assessment Workload,* and ETA 9129, *Reemployment Services and Eligibility Assessment Outcomes.* Additional information about RESEA participants, who are required to be co-enrolled with the Wagner-Peyser Act Employment Service, will be collected and reported through the WIOA Common Performance Reporting System, ETA 9172, *Participant Individual Record Layout.* This information is submitted through ETA's Workforce Integrated Performance System (WIPS). For more information about WIPS, please visit: *https://www.doleta.gov/performance/wips/.*

V. Questions for Consideration

Section 306(f)(4), SSA, requires consultation with the states and the public in developing the allocation formula for base funding and the criteria for making the outcome payments. It also requires that the allocation formula for base funding and outcome payment criteria be made publicly available. To provide an opportunity for states and the public to submit comments and input regarding the base funding

[1] The term ''base funding percentage'' as used here is a percentage of the funds appropriated for RESEA grants to operate the program in a fiscal year. Section 306(B) defines the base funding percentage for fiscal years 2021 through 2026 as 89 percent and for fiscal years after 2026 as 84 percent.

[2] Section 306(f)(2)(B), SSA defines the ''outcome reservation percentage'' as 10 percent for fiscal years 2021 through 2026 and 15 percent for fiscal years thereafter.

allocation and outcome payments criteria of RESEA funds to states, ETA is publishing this FRN. Below are questions commenters may wish to consider in responding to this FRN; however, responses are not limited to the suggested questions. Respondents are free to provide any input related to RESEA program funding cited in Section 306, SSA.

- What are operational concerns about the RESEA program that the Secretary should consider in developing the funding formula?
- Do you have an alternative recommendation for calculating the base allocation?
- Do you have recommendations for distributing the outcome payments?
- What specific concerns or suggestions do you have regarding the DOL proposed formula, set out in this FRN for allocating RESEA funding?
- What general concerns do you have regarding RESEA administrative funding?

Individuals wishing to provide comments, suggestions, and responses related to this FRN and concerning RESEA program funding must submit them by following the instructions set out in the **ADDRESSEE** section above. Submitted comments will be a matter of public record and posted on the internet, without redaction. DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

Molly E. Conway,

Acting Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2019–06558 Filed 4–3–19; 8:45 am]

BILLING CODE 4510–FW–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Physics; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name and Committee Code: LIGO Operations Review for the Division of Physics (1208)—LIGO Livingston Observatory.

Date and Time:

April 30, 2019; 8:30 a.m.–5:30 p.m.

May 1, 2019; 9:00 a.m.–5:30 p.m.

Place: LIGO Livingston Observatory, 19100 Ligo Ln., Livingston, LA 70754.

Type of Meeting: Part-Open.

Contact Person: Dr. Mark Coles, Program Director, Division of Physics, National Science Foundation, 2415 Eisenhower Avenue, Room W 9216, Alexandria, VA 22314; Telephone: (703) 292–4432.

Purpose of Meeting: Site visit to provide an evaluation of the progress of the projects at the host site for the Division of Physics at the National Science Foundation.

Agenda

April 30, 2019		
08:30 a.m.–09:15 a.m	Executive Session	CLOSED
09:15 a.m.–09:45 a.m	Welcome	OPEN
09:45 a.m.–10:30 a.m	LIGO Laboratory Management	OPEN
10:30 a.m.–10:40 a.m	Break.	
10:40 a.m.–12:00 p.m	LIGO Detector Commissioning and Upgrades	OPEN
12:00 p.m.–01:00 p.m	Lunch.	
01:00 p.m.–01:45 p.m	LIGO Scientific Progr a.m.	OPEN
01:45 p.m.–02:30 p.m	LIGO Computing	OPEN
02:30 p.m.–03:15 p.m	LIGO Laboratory LIGO-India Progr a.m.	OPEN
03:15 p.m.–03:30 p.m	Break.	
03:30 p.m.–04:15 p.m	LIGO Laboratory Education and Public Outreach	OPEN
04:15 p.m.–05:30 p.m	Panel Executive Session	CLOSED
May 1, 2019		
09:00 a.m.–11:00 a.m	LIGO Laboratory Education and Public Outreach	OPEN
11:00 a.m.–02:00 p.m	American Physical Society Ceremony	OPEN
02:00 p.m.–04:00 p.m	LIGO Gravitational-wave Science	OPEN
	LIGO Laboratory Management/Budget I.	
04:00 p.m.–05:30 p.m	Executive Session	CLOSED

Reason for Closing: The work being reviewed during closed portions of the site visit include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the project. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 1, 2019.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2019–06560 Filed 4–3–19; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2017–0060]

Information Collection: NRC Form 361, Reactor Plant Event Notification Worksheet; NRC Form 361A, Fuel Cycle and Materials Event Notification Worksheet; NRC Form 361N, Non-Power Reactor Event Notification Worksheet

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a request for proposed collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, NRC Form 361, Reactor Plant Event Notification Worksheet; NRC Form 361A, Fuel Cycle and Materials Event Notification Worksheet; NRC Form 361N, Non-Power Reactor Event Notification Worksheet.

DATES: Submit comments by May 6, 2019.

ADDRESSES: Submit comments directly to the OMB reviewer at: OMB Office of Information and Regulatory Affairs

(3150–XXXX), Attn: Desk Officer for the Nuclear Regulatory Commission, 725 17th Street NW, Washington, DC 20503; email: *oira_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: David Cullison, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2017–0060 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2017–0060. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC–2017–0060 on this website.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* A copy of the collection of information and related instructions may be obtained without charge by accessing ADAMS Accession Nos: ML19057A161, ML19057A167, and ML19057A169. The supporting statement is available in ADAMS under Accession No. ML19057A101.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

B. Submitting Comments

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *http://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC recently submitted a proposed collection of information to OMB for review entitled, ''NRC Form 361, Reactor Plant Event Notification Worksheet; NRC Form 361A, Fuel Cycle and Materials Event Notification Worksheet; NRC Form 361N, Non-Power Reactor Event Notification Worksheet.'' The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on September 25, 2018 (83 FR 48472).

1. *The title of the information collection:* NRC Form 361, Reactor Plant Event Notification Worksheet, NRC Form 361A, Fuel Cycle and Materials Event Notification Worksheet; NRC Form 361N, Non-Power Reactor Event Notification Worksheet.''
2. *OMB approval number:* 3150–XXXX.
3. *Type of submission:* New.
4. *The form number if applicable:* NRC Form 361, NRC Form 361A, NRC Form 361N.
5. *How often the collection is required or requested:* On occasion, as defined, NRC licensee events are reportable when they occur.
6. *Who will be required or asked to respond:* Holders of NRC licenses for commercial nuclear power plants, fuel cycle facilities, NRC material licensees, and non-power reactors.
7. *The estimated number of annual responses:* 537.
8. *The estimated number of annual respondents:* 537.
9. *An estimate of the total number of hours needed annually to comply with the information collection requirement or request:* 268.5 hours.
10. *Abstract:* The NRC requires its licensees to report by telephone certain reactor events and emergencies that have potential impact to public health and safety. In order to efficiently process the information received through such reports for reactors, the NRC created Forms 361 to provide a templated worksheet for recording the information. NRC licensees are not required to fill out or submit the worksheet, but the form provides the usual order of questions and discussion to enable a licensee to prepare answers for a more clear and complete telephonic notification. Without the templated format of the NRC Forms 361, the information exchange between licensees and NRC Headquarters Operations Officers via telephone could result in delays as well as unnecessary transposition errors.

Dated at Rockville, Maryland, this 1st day of April 2019.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2019–06550 Filed 4–3–19; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–250, 50–251; NRC–2018–0101]

Florida Power & Light Company; Turkey Point Nuclear Generating Unit Nos. 3 and 4

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft supplemental environmental impact statement; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment draft plant-specific Supplement 5, Second Renewal, to the Generic Environmental Impact Statement (GEIS) for License Renewal of Nuclear Plants, NUREG–1437, regarding the subsequent renewal of Facility Operating License Nos. DPR–31 and DPR–41 for an additional 20 years of operation for Turkey Point Nuclear Generating Unit Nos. 3 and 4 (Turkey Point). The Turkey Point facility is

located in Miami-Dade County, Florida. Possible alternatives to the proposed action (subsequent license renewal) include no action and reasonable replacement power and cooling water system alternatives.

DATES: Submit comments by May 20, 2019. Comments received after this date will be considered, if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

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

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0101. Address questions about NRC dockets to Jennifer Borges; telephone: 301 287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, ATTN: Program Management, Announcements and Editing Staff, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Email comments to: TurkeyPoint34SLREIS.Resource@nrc.gov*

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: David Drucker, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6223; email: *David.Drucker@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2018–0101 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document by any of the following methods:

- *Federal Rulemaking Website:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2018–0101.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that the document is referenced here. Draft plant-specific Supplement 5, Second Renewal, to the GEIS for License Renewal of Nuclear Plants, NUREG–1437, is available in ADAMS under Accession No. ML19078A330.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *Library:* A copy of draft plant-specific Supplement 5, Second Renewal, to the GEIS for License Renewal of Nuclear Plants, NUREG–1437, is available at the following locations: Homestead Branch Library, 700 N. Homestead Blvd., Homestead, FL 33033; Naranja Branch Library, 14850 SW 280th St., Homestead, FL 33032; South Dade Regional Library, 10750 SW 211th St., Miami, FL 33189; and Downtown Miami Branch, 101 West Flagler St., Miami, FL 30130.

B. Submitting Comments

Please include Docket ID NRC–2018–0101 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Discussion

The NRC is issuing for public comment draft plant-specific Supplement 5, Second Renewal, to the GEIS for License Renewal of Nuclear Plants, NUREG–1437, regarding the subsequent renewal of Facility Operating License Nos. DPR–31 and DPR–41 for an additional 20 years of operation for Turkey Point Unit Nos. 3 and 4. Draft plant-specific Supplement 5, Second Renewal, to the GEIS includes the preliminary analysis that evaluates the environmental impacts of the proposed action and alternatives to the proposed action. The NRC's preliminary recommendation is that the adverse environmental impacts of subsequent license renewal for Turkey Point are not so great that preserving the option of subsequent license renewal for energy-planning decisionmakers would be unreasonable.

III. Public Meetings

The NRC staff will hold two public meetings prior to the close of the public comment period to present an overview of the draft plant-specific supplement to the GEIS and to accept public comment on the document. The meetings will be held on May 1, 2019, from 1:00 p.m. to 3:00 p.m. and from 6:00 p.m. to 8:00 p.m. at the City of Homestead City Hall, 100 Civic Court, Homestead, FL 33030. There will be an open house one hour before each meeting for members of the public to meet with NRC staff members and sign in to speak. The meetings will be transcribed and will include: (1) A presentation of the contents of the draft plant-specific supplement to the GEIS and (2) the opportunity for interested government agencies, organizations, and individuals to provide comments on the draft plant-specific supplement to the GEIS. To be considered in the final supplement to the GEIS, comments must be provided either at the transcribed public meetings or submitted in writing by the comment deadline identified above. Persons may pre-register to attend or present oral comments at the meetings by contacting Mr. William Burton, the NRC Project Manager, at 301–415–6332, or by email at *William.Burton@nrc.gov* no later than Tuesday, April 23, 2019. Members of the public may also register to provide oral comments within 15 minutes before the start of the meetings. Individual oral comments may be limited by the time available, depending on the number of persons who register. If special equipment or accommodations are needed to attend or present information at the public meeting, the need should be brought to Mr. Burton's attention no later than Tuesday, April 23, 2019, to provide the NRC staff adequate notice to determine whether the request can be accommodated.

Dated at Rockville, Maryland, this 1st day of April 2019.

For the Nuclear Regulatory Commission.

Eric R. Oesterle,

Chief, License Renewal Projects Branch, Division of Materials and License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. 2019–06612 Filed 4–3–19; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Product Change—Priority Mail and First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* April 4, 2019.

FOR FURTHER INFORMATION CONTACT: Elizabeth Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on March 29, 2019, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & First-Class Package Service Contract 98 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2019–114, CP2019–123.

Elizabeth Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2019–06531 Filed 4–3–19; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* April 4, 2019.

FOR FURTHER INFORMATION CONTACT: Elizabeth Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on March 29, 2019, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 518 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2019–115, CP2019–124.

Elizabeth Reed,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2019–06532 Filed 4–3–19; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85449; File No. SR–NYSENAT–2019–03]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Schedule of Fees and Rebates Related to Co-Location Services

March 29, 2019.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on March 15, 2019, NYSE National, Inc. (the ''Exchange'' or ''NYSE National'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Schedule of Fees and Rebates (the ''Price List'') related to co-location services to provide access to the execution system of Global OTC. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Price List related to co-location [4] services offered by the Exchange to provide Users [5] with access to the execution system of Global OTC (the ''Global OTC System''). Global OTC is an alternative trading system (''ATS'') that facilitates transactions in over-the-counter equity securities.[6]

The Exchange proposes to implement the rule change on the first day of the month after it becomes operative. The Exchange will announce the implementation date through a customer notice.

As set forth in the Price List, the Exchange charges fees for connectivity to the execution systems of third party markets and other content service providers (''Third Party Systems'').[7] The Exchange has an indirect interest in Global OTC because it is owned by the Exchange's ultimate parent, Intercontinental Exchange, Inc.[8] The Exchange proposes to treat Global OTC as a Third Party System and add it to the list of Third Party Systems set forth in the Price List.

As with the current Third Party Systems, in order to obtain access to the

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange initially filed rule changes relating to its co-location services with the Commission on May 18, 2018. *See* Securities Exchange Act Release No. 83351 (May 31, 2018), 83 FR 26314 (June 6, 2018) (SR–NYSENAT–2018–07). The Exchange operates a data center in Mahwah, New Jersey (the ''data center'') from which it provides co-location services to Users.

[5] For purposes of the Exchange's co-location services, a ''User'' means any market participant that requests to receive co-location services directly from the Exchange. *See id.* at note 9. As specified in the Price List, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates the New York Stock Exchange (''NYSE''), NYSE American LLC (''NYSE American''), and NYSE Arca, Inc. (''NYSE Arca'' and together, the ''Affiliate SROs''). *See id.* at note 11.

[6] *See* 17 CFR 242.300(a). An ATS is a trading system that meets the definition of ''exchange'' under federal securities laws but is not required to register as a national securities exchange if the ATS operates under an exemption provided under the Act.

[7] *See* 83 FR 26314, *supra* note 4, at 26322.

[8] *See id.*

Global OTC System, the User would enter into an agreement with Global OTC, pursuant to which Global OTC would charge the User for access to the Global OTC System. Once the Exchange receives authorization from Global OTC, the Exchange would establish a connection between the User and the Global OTC System.[9]

As with the existing connections to Third Party Systems, the Exchange proposes to charge a monthly recurring fee for connectivity to the Global OTC System. The Exchange does not propose to change the current fee, which is for connectivity only.[10]

Currently, connectivity to the Third Party Systems is over the internet protocol (''IP'') network, a local area network available in the data center.[11] Users would have two options for connecting to the OTC Global System: Over the IP network or the Liquidity Center Network (''LCN''), the other local area network available in the data center.[12] Accordingly, the Exchange proposes to amend the third sentence of the paragraph under ''Connectivity to Third Party Systems'' in the Price List to state that ''[c]onnectivity to Third Party Systems is over the IP network, with the exception that Users can connect to Global OTC over the IP network or LCN.''

The proposed treatment of Global OTC would be consistent with its treatment in other contexts. The Exchange also treats Global OTC as a third party with respect to connectivity to data feeds from third party markets and other content service providers (the ''Third Party Data Feeds'').[13] The Exchange proposes that Users could connect to the Global OTC System over the IP network or LCN: This is substantially the same as with Third Party Data Feeds, where ''[c]onnectivity . . . is over the IP network, with the exception that Users can connect to Global OTC and ICE Data Global Index over the IP network or LCN.''[14]

The Exchange would provide access to the Global OTC System (''Access'') as a convenience to Users. Use of Access is completely voluntary, and it is the Exchange's understanding that currently third party options are available to a User to access the Global OTC System. The Exchange is not aware of any impediment to additional third parties offering such access. With respect to third parties that presently offer, or in the future opt to offer, access to the Global OTC Systems, a User may access such services through the Secure Financial Transaction Infrastructure (''SFTI'') network, a third party telecommunication network, third party wireless network, a cross connect, or a combination thereof to access such services and products through a connection to an access center outside the data center (which could be a SFTI access center, a third-party access center, or both), another User, or a third party vendor.

Establishing a User's access to the Global OTC System would not give the Exchange any right to use the Global OTC System. Connectivity to the Global OTC System would not provide access or order entry to the Exchange's execution system, and a User's connection to the Global OTC System would not be through the Exchange's execution system.

General

As is the case with all Exchange co-location arrangements, (i) neither a User nor any of the User's customers would be permitted to submit orders directly to the Exchange unless such User or customer is a member organization, a Sponsored Participant or an agent thereof (*e.g.,* a service bureau providing order entry services); (ii) use of the co-location services proposed herein would be completely voluntary and available to all Users on a non-discriminatory basis;[15] and (iii) a User would only incur one charge for the particular co-location service described herein, regardless of whether the User connects only to the Exchange or to the Exchange and one or more of the Affiliate SROs.[16]

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed fee change is consistent with Section 6(b) of the Act,[17] in general, and furthers the objectives of Sections 6(b)(5) of the Act,[18] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed changes would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because, by offering access to the Global OTC System, the Exchange would give each User additional options for addressing its access needs, responding to User demand for access options. Providing additional services would help each User tailor its data center operations to the requirements of its business operations by allowing it to select the form and latency of access that best suits its needs.

The Exchange would provide Access as a convenience to Users. Use of Access is completely voluntary, and it is the Exchange's understanding that currently third party options are available to a User to access the Global OTC System. The Exchange is not aware of any impediment to additional third parties offering such access. With respect to third parties that presently offer, or in the future opt to offer, access to the Global OTC Systems, a User may access such services through the SFTI network, a third party telecommunication network, third party wireless network, a cross connect, or a combination thereof to access such services and products through a connection to an access center outside the data center (which could be a SFTI access center, a third-party access center, or both), another User, or a third party vendor.

The Exchange believes that the proposed change would remove impediments to, and perfect the mechanisms of, a free and open market

[9] *See id.*

[10] *See id.*

[11] *See id.* at 26316.

[12] *See id.*

[13] *See id.* at 26322–26323.

[14] Price List, at 17; *see* 83 FR 26314, *supra* note 4, at 26323.

[15] As is currently the case, Users that receive co-location services from the Exchange will not receive any means of access to the Exchange's trading and execution systems that is separate from, or superior to, that of other Users. In this regard, all orders sent to the Exchange enter the Exchange's trading and execution systems through the same order gateway, regardless of whether the sender is co-located in the data center or not. In addition, co-located Users do not receive any market data or data service product that is not available to all Users, although Users that receive co-location services normally would expect reduced latencies in sending orders to, and receiving market data from, the Exchange.

[16] *See id.* at 26315. NYSE, NYSE American, and NYSE Arca have submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSE–2019–07, SR–NYSEAmer–2019–03, and SR–NYSEArca–2019–07.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

and a national market system and, in general, protect investors and the public interest because the proposed treatment of Global OTC would be consistent with its treatment in other contexts. The Exchange also treats Global OTC as a third party with respect to connectivity to Third Party Data Feeds.[19] The Exchange proposes that Users could connect to the Global OTC System over the IP network or LCN: This is substantially the same as with Third Party Data Feeds, where connectivity is over the IP network, with the exception that Users can connect to Global OTC and one other Third Party Data Feed over the IP network or LCN.[20]

The Exchange also believes that the proposed fee change is consistent with Section 6(b)(4) of the Act,[21] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed fee change is consistent with Section 6(b)(4) of the Act for multiple reasons. The Exchange operates in a highly competitive market in which exchanges offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. Accordingly, fees charged for co-location services are constrained by the active competition for the order flow of, and other business from, such market participants. If a particular exchange charges excessive fees for co-location services, affected market participants will opt to terminate their co-location arrangements with that exchange, and adopt a possible range of alternative strategies, including placing their servers in a physically proximate location outside the exchange's data center (which could be a competing exchange), or pursuing strategies less dependent upon the lower exchange-to-participant latency associated with co-location. Accordingly, the exchange charging excessive fees would stand to lose not only co-location revenues but also the liquidity of the formerly co-located trading firms, which could have additional follow-on effects on the market share and revenue of the affected exchange.

The Exchange believes that the proposed charges would be reasonable, equitably allocated and not unfairly discriminatory because it would treat connectivity to the Global OTC System the same as connectivity to the execution system of other ATSs. Currently, the Third Party Systems include two ATSs.[22]

The Exchange believes that the additional service proposed herein would be equitably allocated and not unfairly discriminatory because, in addition to Access being completely voluntary, it would be available to all Users on an equal basis (*i.e.,* the same Access would be available to all Users). All Users that voluntarily selected to receive Access would be charged the same amount for the same service. Users that opted to use Access would not receive access that is not available to all Users, as all market participants that contracted with Global OTC would receive access.

The Exchange believes that the proposed charges would be reasonable, equitably allocated and not unfairly discriminatory because the Exchange would offer the Access as a convenience to Users, but in order to do so must provide, maintain and operate the data center facility hardware and technology infrastructure. The Exchange must handle the installation, administration, monitoring, support and maintenance of such services, including by responding to any production issues. Since the inception of co-location, the Exchange has made numerous improvements to the network hardware and technology infrastructure and has established additional administrative controls. The Exchange has expanded the network infrastructure to keep pace with the increased number of services available to Users, including resilient and redundant feeds. In addition, in order to provide Access, the Exchange would maintain multiple connections to the Global OTC System, allowing the Exchange to provide resilient and redundant connections; adapt to any changes made by Global OTC; and cover any applicable fees charged by Global OTC, such as port fees. In addition, Users would not be required to use any of their bandwidth for Access unless they wish to do so.

The Exchange believes the fees for Access are reasonable because they allow the Exchange to defray or cover the costs associated with offering Users Access while providing Users the convenience of receiving such Access within co-location, helping them tailor their data center operations to the requirements of their business operations.

For the reasons above, the proposed changes would not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[23] the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because all of the proposed services are completely voluntary.

The Exchange believes that providing Users with additional options for access to the Global OTC Systems would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because such proposed Access would satisfy User demand for access options. The Exchange would provide Access as a convenience to Users. Use of Access is completely voluntary, and it is the Exchange's understanding that currently third party options are available to a User to access the Global OTC System. The Exchange is not aware of any impediment to additional third parties offering such access. With respect to third parties that presently offer, or in the future opt to offer, access to the Global OTC Systems, a User may access such services through the SFTI network, a third party telecommunication network, third party wireless network, a cross connect, or a combination thereof to access such services and products through a connection to an access center outside the data center (which could be a SFTI access center, a third-party access center, or both), another User, or a third party vendor.

Users that opt to use the proposed Access would not receive access that is not available to all Users, as all market participants that contract with Global OTC may receive access. In this way, the proposed changes would enhance competition by helping Users tailor their Access to the needs of their business operations by allowing them to select the form and latency of access and connectivity that best suits their needs.

[19] *Supra* note 13.

[20] *Supra* note 14.

[21] 15 U.S.C. 78f(b)(4).

[22] Credit Suisse and OTC Markets have ATSs. *See* Commission list of ATSs at *https://www.sec.gov/foia/docs/atslist.htm.*

[23] 15 U.S.C. 78f(b)(8).

The Exchange believes that the proposed change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because it would treat connectivity to the Global OTC System the same as connectivity to the execution system of other ATSs. Specifically, they would all be Third Party Systems subject to the same fees. In addition, the proposed treatment of Global OTC would be consistent with its treatment in other contexts. The Exchange also treats Global OTC as a third party with respect to connectivity to Third Party Data Feeds.[24]

Currently, connectivity to the Third Party Systems is over the IP network. The Exchange believes that allowing Users to connect to the Global OTC System over either the IP network or LCN would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Currently, the Third Party Systems include two ATS, of which the Exchange believes OTC Markets is the most comparable to Global OTC, although Global OTC is substantially the smaller of the two.[25] While an LCN connection provides lower latency than the IP network, that latency difference is relevant, as a practical matter, only for connections within the Mahwah data center, where the Global OTC System is located. When connecting to a comparable, competing ATS located in another data center, such as OTC Markets, Users within the Mahwah data center would incur geographical latency that would dwarf any differences between the IP network and LCN. Furthermore, it is the Exchange's understanding that market participants trading in non-NMS securities tend to be less latency sensitive due to the smaller pools of liquidity in the over-the-counter markets.

Allowing Users to connect to the Global OTC System would be consistent with the treatment of Third Party Data Feeds, where connectivity is over the IP network, with the exception that Users can connect to Global OTC and one other Third Party Data Feed over the IP network or LCN.[26]

The Exchange operates in a highly competitive market in which exchanges offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. Accordingly, fees charged for co-location services are constrained by the active competition for the order flow of, and other business from, such market participants. If a particular exchange charges excessive fees for co-location services, affected market participants will opt to terminate their co-location arrangements with that exchange, and adopt a possible range of alternative strategies, including placing their servers in a physically proximate location outside the exchange's data center (which could be a competing exchange), or pursuing strategies less dependent upon the lower exchange-to-participant latency associated with co-location. Accordingly, the exchange charging excessive fees would stand to lose not only co-location revenues but also the liquidity of the formerly co-located trading firms, which could have additional follow-on effects on the market share and revenue of the affected exchange. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[27] and Rule 19b–4(f)(6) thereunder.[28] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[29]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[30] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSENAT–2019–03 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–NYSENAT–2019–03. 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

[24] *Supra* note 13.

[25] Both Global OTC and the OTC Markets are inter-dealer quotation systems. The third is the OTC Bulletin Board, a facility of the Financial Industry Regulatory Authority. Global OTC's market share is approximately 10% of average daily volume of trades of over-the-counter equities, compared to OTC Markets' market share of approximately 90% of average daily volume of trades. *See https://www.globalotc.com/brokers/market-share.*

[26] *Supra* note 14.

[27] 15 U.S.C. 78s(b)(3)(A)(iii).

[28] 17 CFR 240.19b–4(f)(6).

[29] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[30] 15 U.S.C. 78s(b)(2)(B).

business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSENAT–2019–03 and should be submitted on or before April 25, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–06507 Filed 4–3–19; 8:45 am]

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[31] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85470; File No. SR–FICC–2018–013]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Approving a Proposed Rule Change To Expand Sponsoring Member Eligibility in the Government Securities Division Rulebook and Make Other Changes

March 29, 2019.

I. Introduction

On December 13, 2018, Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] proposed rule change SR–FICC–2018–013 to expand sponsoring member eligibility and make other changes.[3] The proposed rule change was published for comment in the **Federal Register** on December 31, 2018.[4] On February 14, 2019, the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change and reopened the period for comment on the proposed rule change.[5] The Commission received five comment letters to the proposed rule change,[6] including a response letter from FICC. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

FICC proposes to amend the FICC Government Securities Division (''GSD'') Rulebook (''Rules'')[7] to (i) allow a broader group of GSD Netting Members[8] to participate in FICC as Sponsoring Members,[9] (ii) allow Sponsored Members to transact with Netting Members that are not the Sponsoring Member through a certain omnibus account maintained by the Sponsoring Member, and (iii) make certain conforming and technical changes.

A. The Proposed Expansion of Sponsored Member Eligibility

FICC proposes to broaden the group of GSD Netting Members that may participate in FICC as Sponsoring Members. Currently, GSD Bank Netting Members that are well-capitalized with at least $5 billion in equity capital are permitted to serve as Sponsoring Members (''Category 1 Sponsoring Members'') and sponsor certain institutional firms into GSD membership as Sponsored Members.[10] A Sponsoring Member is permitted to submit to FICC for comparison, novation, and netting certain types of eligible transactions between itself and its Sponsored Members (''Sponsored Member Trades'').[11] For operational and administrative purposes, FICC interacts solely with the Sponsoring Member as agent for purposes of the day-to-day satisfaction of its Sponsored Members' obligations to FICC, including the Sponsored Members' securities and funds-only settlement obligations.[12]

FICC proposes to add a second category of Netting Members eligible to become Sponsoring Members. This second category would include Netting Members that are Tier One Netting Members (''Category 2 Sponsoring Members''),[13] except for Inter-Dealer Broker (''IDB'') Netting Members and Non-IDB Repo Brokers with respect to activity in their segregated repo accounts.[14] Category 2 Sponsoring Members could include, for example, dealer Netting Members, Futures Commission Merchant Netting Members, and foreign Netting Members.[15]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On December 13, 2018, FICC also filed the proposal contained in the proposed rule change as advance notice SR–FICC–2018–802 with the Commission pursuant to Section 806(e)(1) of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010 (''Clearing Supervision Act''), 12 U.S.C. 5465(e)(1), and Rule 19b–4(n)(1)(i) of the Act, 17 CFR 240.19b–4(n)(1)(i). As of February 11, 2019, pursuant to Section 806(e)(1) of the Clearing Supervision Act, the advance notice was deemed to not have been objected to by the Commission. 12 U.S.C. 5465(e)(1); *see* Memorandum, Division of Trading and Markets, U.S. Securities and Exchange Commission, to File No. SR–FICC–2018–802, *available at https://www.sec.gov/rules/sro/ficc-an/2019/ficc-2018-802-memo-deemed-approved.pdf.*

[4] Securities Exchange Act Release No. 84951 (December 21, 2018), 83 FR 67801 (December 31, 2018) (SR–FICC–2018–013) (''Notice'').

[5] Securities Exchange Act Release No. 85137 (February 14, 2019), 84 FR 5523 (February 21, 2019) (SR–FICC–2018–013).

[6] *See* letter from Robert E. Pooler, Jr., Chief Financial Officer, Ronin Capital, LLC, dated January 18, 2019, to Brent J. Fields, Secretary, Commission (''Ronin Letter''); letter from James Tabacchi, Chairman, Independent Dealer and Trade Association, dated January 22, 2019, to Brent J. Fields, Secretary, Commission (''IDTA Letter''); letter from Robert Toomey, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated January 22, 2019, to Brent J. Fields, Secretary, Commission (''SIFMA Letter''); letter from Stephen John Berger, Managing Director, Government & Regulatory Policy, Citadel, dated January 30, 2019, to Brent J. Fields, Secretary, Commission (''Citadel Letter''); and letter from Murray Pozmanter, Managing Director, DTCC, dated February 4, 2019, to Brent J. Fields, Secretary, Commission (''FICC Response Letter''). *See* comments on the proposed rule change (SR–FICC–2018–013), *available at https://www.sec.gov/comments/sr-ficc-2018-013/srficc2018013.htm.* Because the proposal contained in the proposed rule change was also filed as an advance notice, *supra* note 3, the Commission is considering all public comments received on the proposal regardless of whether the comments were submitted to the advance notice or the proposed rule change.

[7] *Available at http://www.dtcc.com/~/media/Files/Downloads/legal/rules/ficc_gov_rules.pdf.*

[8] The term ''Netting Member'' is defined in FICC's GSD Rule 1 as a Member of FICC's Comparison System (*i.e.,* the system of reporting, validating, and matching the long and short sides of securities trades to ensure that the details of such trades are in agreement between the parties) and FICC's Netting System (*i.e.,* the system for aggregating and matching offsetting obligations resulting from trades).

[9] ''Sponsoring Membership'' is an existing program that allows well-capitalized bank members to sponsor their eligible clients into GSD Membership. Sponsored membership at GSD offers eligible clients the ability to lend cash or eligible collateral via FICC-cleared deliver-versus payment repo throughout the day. Sponsoring Member banks facilitate their sponsored clients' GSD trading activity and act as processing agents on their behalf for all operational functions, including trade submission and settlement with FICC.

[10] Notice, 83 FR at 67802; Rule 3A, Section 2, *supra* note 7.

[11] Notice, 83 FR at 67802. FICC requires the Sponsoring Member to establish an omnibus account at FICC for all of its Sponsored Members' FICC-cleared activity (''Sponsoring Member Omnibus Account''), which is separate from the Sponsoring Member's regular netting account. Rule 1; Rule 3A, Section 10, *supra* note 7.

[12] Notice, 83 FR at 67802; *see* Rule 3A, Sections 5, 6, 7, 8 and 9, *supra* note 7.

[13] The term ''Tier One Netting Member'' is designated in FICC's GSD Rule 2A, *supra* note 7, as a non-registered investment company Netting Member.

[14] Notice, 83 FR at 67802.

[15] *Id.*

FICC stated that it did not include IDB Netting Members and Non-IDB Repo Brokers as a $5 million cap applies to their respective loss allocation obligations to FICC under Rule 4, Section 7, which does not apply to other types of Netting Members.[16] As a Sponsoring Member's loss allocation obligations could otherwise exceed $5 million, FICC stated that it would not be appropriate to allow either IDB Netting Members or Non-IDB Repo Brokers to be eligible to become Category 2 Sponsoring Members. However, FICC stated that to the extent an IDB Netting Member or Non-IDB Repo Broker also has another type of Netting Member status with respect to which it is not subject to the loss allocation cap described above, such IDB Netting Member or Non-IDB Repo Broker could apply to become a Category 2 Sponsoring Member under another Netting Member status.[17]

FICC stated that the minimum financial requirements applicable to Category 2 Sponsoring Members would be the same as its otherwise applicable financial requirements under Section 4(b) of Rule 2A.[18] However, as compared to Category 1 Sponsoring Members, the proposed rule change would provide that FICC could impose greater financial requirements on an applicant to become a Category 2 Sponsoring Member.[19] FICC stated that it decided to provide the option to impose greater financial requirements as a Category 2 Sponsoring Member may have substantially less capital than a Category 1 Sponsoring Member.[20] FICC further stated that its determination as to whether to impose such greater financial requirements on a Category 2 Sponsoring Member applicant would be based upon the level of the anticipated positions and obligations of such applicant, the anticipated risk associated with the volume and types of transactions such applicant proposes to process through FICC as a Category 2 Sponsoring Member, and the overall financial condition of such applicant.[21] Such a determination by FICC to impose increased financial requirements on a Category 2 Sponsoring Member applicant would be subject to the approval of the FICC Board of Directors in connection with its approval of the application of such Category 2 Sponsoring Member.[22] Once approved, FICC would thereafter regularly review a Category 2 Sponsoring Member regarding its continued adherence to such increased financial requirements.[23]

Further, the proposed rule change would also impose an activity limit on a Category 2 Sponsoring Member's Sponsored Member activity so that a Category 2 Sponsoring Member would only be permitted to novate new Sponsored Member activity to FICC to the extent the sum of the value at risk charges (''VaR Charges'')[24] of its Sponsoring Member Omnibus Account(s) and its Netting System accounts (''Aggregate VaR Charges'') do not exceed its Netting Member Capital,[25] unless otherwise determined by the Corporation in order to promote orderly settlement.[26] FICC stated that it anticipates calculating the ratio of a Category 2 Sponsoring Member's Aggregate VaR Charges to its Netting Member Capital on at least an hourly basis.[27] To the extent a Category 2 Sponsoring Member's Aggregate VaR Charges exceed its Netting Member Capital, the member would not be permitted to submit new Sponsored Member activity to FICC until its Netting Member Capital equals or exceeds its Aggregate VaR Charges.[28] FICC stated that it anticipates it would provide exceptions in order to promote orderly settlement to include, but not be limited to, circumstances in which the novation of such activity would have a risk-reducing impact on the Category 2 Sponsoring Member's overall FICC-cleared portfolio.[29]

Moreover, FICC stated that to be consistent with its authority under Section 7 of Rule 3 (Ongoing Membership Requirements), FICC would reserve the right to require each Sponsoring Member, or any Netting Member applicant to become such, to furnish to FICC such adequate assurances of its financial responsibility and operational capability within the meaning of Section 7 of Rule 3 as FICC may at any time or from time to time deem necessary or advisable in order to protect FICC and its members, to safeguard securities and funds in the custody or control of FICC and for which FICC is responsible, or to promote the prompt and accurate clearance and settlement of securities transactions.[30] Such a determination by FICC to impose adequate assurances on a Sponsoring Member applicant would be subject to the approval of the FICC Board of Directors in connection with its approval of the application of such Sponsoring Member, and, once approved, FICC would thereafter regularly review such Sponsoring Member regarding its compliance with such adequate assurances requirements, as appropriate.[31] Any adequate assurances imposed on a Sponsoring Member by FICC after its approval would be communicated in writing to the Sponsoring Member and FICC would thereafter regularly review such Sponsoring Member regarding its compliance with such adequate assurances, as appropriate.[32]

B. Proposed Addition of an Omnibus Account

FICC proposes to allow Sponsored Members to transact with Netting Members that are not the Sponsoring Member through a certain omnibus account maintained by the Sponsoring Member. Currently, Rule 1 defines the term ''Sponsored Member Trade'' as ''a transaction between a Sponsored Member and its Sponsoring Member . . . .''[33] FICC proposes to allow a Sponsoring Member to establish one or more Sponsoring Member Omnibus Accounts that may contain transactions between a Sponsored Member and a Netting Member other than the Sponsoring Member.[34] A Sponsoring Member may use the Omnibus Account in addition to or in lieu of an account in which only transactions between a Sponsored Member and its Sponsoring Member would be permitted.[35]

[16] *Id.* Section 7 of Rule 4, *supra* note 7, provides that ''an Inter-Dealer Broker Netting Member, or a Non-IDB Repo Broker with respect to activity in its Segregated Repo Account, shall not be subject to an aggregate loss allocation in an amount greater than $5 million pursuant to this Section 7 for losses and liabilities resulting from an Event Period.'' The limit on loss allocation for these Members reflects their risk profile.

[17] Notice, 83 FR at 67802–03.

[18] Notice, 83 FR at 67803.

[19] *Id.*

[20] *Id.*

[21] *Id.*

[22] *Id.*

[23] *Id.*

[24] Each Netting Member is required to make margin deposits (each, a ''Required Fund Deposit'') to FICC's Clearing Fund. Rule 4, *supra* note 7. A Netting Member's Required Fund Deposit amount is comprised of several components, the largest of which is generally the VaR Charge. Notice, 83 FR at 67803.

[25] The term ''Netting Member Capital'' means net capital, net assets, or equity capital as applicable, to a Netting Member based on its type of regulation. Rule 1, *supra* note 7.

[26] Notice, 83 FR at 67803.

[27] *Id.*

[28] *Id.*

[29] *Id.*

[30] *Id.*

[31] *Id.*

[32] *Id.*

[33] *Id.;* Rule 1, definition of ''Sponsored Member Trade,'' *supra* note 7.

[34] Notice, 83 FR at 67804.

[35] *Id.* To the extent a Sponsoring Member elects to establish a Sponsoring Member Omnibus Account that may contain transactions between a Sponsored Member and a Netting Member other than the Sponsoring Member, FICC anticipates calculating the Required Fund Deposit for such Sponsoring Member Omnibus Account to be inclusive of all transactions submitted into such

Continued

C. Conforming and Technical Changes

FICC proposes conforming and technical changes to its rules. In order to conform to expanding the Sponsored Membership eligibility, FICC proposes to amend Section 2(e) of Rule 3A by deleting the reference to Bank Netting Members and adding language that provides that each Sponsoring Member would submit to FICC the reports and information required to be submitted for its respective type of Netting Member.[36] FICC also proposes to make a conforming change to the first sentence in Section 2(h) of Rule 3A to reference to add the newly defined term ''Category 1'' before the first reference to Sponsoring Member.[37]

IV. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act[38] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder applicable to such organization. After carefully considering the proposed rule change, the comments received, and FICC's response thereto, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to FICC. In particular, the Commission finds that the proposed rule change is consistent with Sections 17A(b)(3)(F)[39] and 17A(b)(3)(I)[40] of the Act and Rule 17Ad–22(e)(18) thereunder.[41]

A. Consistency With Section 17A(b)(3)(F)

Section 17A(b)(3)(F) of the Act requires, in part, that the Rules be designed to (i) remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions and (ii) protect investors and the public interest.[42]

First, the Commission believes the proposed rule change is designed to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. Specifically, the Commission believes that the expansion of the Sponsored Membership program eligibility and addition of an Omnibus Account(s) are consistent with Section 17A(b)(3)(F).[43] As described above, eligibility to be a Sponsored Member currently is limited to Sponsored Members of Category 1 Sponsoring Members. Entities that are not Sponsored Members of a Category 1 Sponsoring Member and otherwise engage in the same type of eligible trading activity outside of a central counterparty currently do not avail themselves of the guaranteed settlement, novation, and independent risk management offered by FICC through the Sponsored Membership program. To help address this issue, the proposal would expand the Sponsored Membership program to include Category 2 Sponsoring Members and allow Sponsored Members to transact with Netting Members that are not the Sponsoring Member through an Omnibus Account maintained by the Sponsoring Member.

The Commission believes that the proposal's expansion of the Sponsored Membership program would help make the risk-reducing benefits of central clearing available to a wider range of entity types. In turn, increased trading activity through the expanded Sponsored Membership program could help (i) lower the risk of diminished liquidity in the U.S. repo market caused by a large scale exit of participants from the market in a stress scenario (through FICC's guaranty of completion of settlement for a greater number of eligible transactions); (ii) protect against fire sale risk (through FICC's ability to centralize and control the liquidation of a greater portion of a failed counterparty's portfolio); and (iii) decrease settlement and operational risk (by making a greater number of transactions eligible to be netted and subject to guaranteed settlement, novation, and independent risk management through FICC).

Commenters in support of the proposal argued that the proposal would enhance the repo market. Specifically, commenters believe that by replacing bilateral counterparty exposures with a model where all market participants face a central counter party, parties are less exposed to a counterparty default.[44] Additionally, commenters believe that increased central clearing could improve trading conditions for market participants, as the associated netting benefits can help to alleviate dealer balance sheet constraints that negatively impact liquidity and lead to increases in volume over time, which should help reduce costs.[45]

In addition, one commenter expressed concern that increased participation in FICC might not increase liquidity in the inter-dealer market as Sponsoring Members could simply match sponsored cash and collateral providers internally to take advantage of balance sheet relief.[46] However, the commenter did not argue against the Commission's approval of the proposal based on the proposal's potential effects on liquidity, as the commenter also acknowledged that increased participation in FICC might actually improve liquidity.[47] Additionally, FICC designed, and the commenter acknowledged, the proposal is an attempt to provide a potential solution for some of the structural inefficiencies that exist in the U.S. Treasury repo market.[48] As such, the proposed rule change is consistent with Section 17A(b)(3)(F).[49]

Likewise, the Commission believes that the conforming and technical changes are consistent with Section 17A(b)(3)(F) by promoting the prompt and accurate clearance and settlement of securities transactions. The proposed changes would help clarify the Sponsored Membership rules.[50] By proposing changes to the Rules to improve clarity, the Commission believes that the proposed changes are designed to help GSD members better understand and remain compliant with the Rules; thus promoting the prompt and accurate clearance and settlement of securities transactions.

Further, the Commission also believes that any flexibility in the proposed rule change is consistent with Section 17A(b)(3)(F).[51] Commenters argue that the proposed rule change should specify under what qualitative standards Category 2 Sponsoring Members would be evaluated and what additional financial requirements and assurances FICC could impose on them.[52] FICC stated that it believes it is appropriate to evaluate all Category 2 Sponsoring Member applicants on a case-by-case basis as applicants can vary widely in terms of their organizational structures, capitalizations, and the nature and

account, including any transactions between a Sponsored Member and a Netting Member other than the Sponsoring Member as well as any transactions between a Sponsored Member and the Sponsoring Member.

[36] Notice, 83 FR at 67804.

[37] *Id.*

[38] 15 U.S.C. 78s(b)(2)(C).

[39] 15 U.S.C. 78q–1(b)(3)(F).

[40] 15 U.S.C. 78q–1(b)(3)(I).

[41] 17 CFR 240.17Ad–22(e)(18).

[42] 15 U.S.C. 78q–1(b)(3)(F).

[43] *Id.*

[44] *See* Ronin Letter at 5; SIFMA Letter at 2; Citadel Letter at 1.

[45] *See* Ronin Letter at 4–5; SIFMA Letter at 2; Citadel Letter at 1.

[46] *See* Ronin Letter at 6–7.

[47] *See id.* at 7.

[48] *See id.*

[49] 15 U.S.C. 78q–1(b)(3)(F).

[50] *Id.*

[51] *Id.*

[52] *See* IDTA Letter at 2–5.

volume of activity they are interested in centrally clearing through FICC.[53]

In expanding Sponsored Membership, FICC must account for the risk of Category 2 Sponsoring Members and their Sponsored Members defaulting to FICC. As the entities eligible for Category 2 Sponsoring Membership are diverse, the Commission believes that flexibility in reviewing applicants on a case-by-case basis would help FICC account for this default risk.

Similarly, a commenter thought that the proposed rule change, as described in the Notice, should be clarified regarding how the types of transactions that can be included in a Sponsoring Member's Omnibus Account would work operationally.[54] In explaining how operationally a Sponsoring Member's Omnibus Account would work FICC stated that (i) while each Sponsored Member's activity is assigned a separate VaR Charge, the positions of a Sponsored Member's activity (x) between itself and its Sponsoring Member and (y) between itself and another Netting Member (in a Sponsoring Member Omnibus Account) would be netted; and (ii) FICC would allow a Sponsoring Member to establish a Sponsoring Member Omnibus Account that could contain activity between Sponsored Members and Netting Members other than Sponsoring Members.[55] The Commission believes that the (i) rule text and (ii) FICC's description of a Sponsoring Member's Omnibus Account are consistent with providing the clarity required for GSD members to understand the Rules, as amended by the proposed rule change.

Second, the Commission believes that the proposed rule change is designed to protect investors and the public interest. Specifically, the Commission believes that the expansion of the Sponsored Membership program and addition of an Omnibus Account(s) are consistent with protecting investors and the public interest. By expanding the types of entities that are eligible to participate and thereby benefit from FICC's guaranteed settlement, novation, and independent risk management, the proposal would help mitigate the risk of a large scale exit by such firms from the U.S. repo market in a stress scenario and, thus, help lower the risk of a liquidity drain in such a scenario. Specifically, the Office of Financial Research's U.S. Money Market Fund Monitor shows that a previous expansion of the Sponsoring Member Program lead to exponential growth in incremental cash investment from money market funds in FICC.[56] Likewise, by providing central clearing to a greater number of Sponsored Member trades, the proposal would help enable FICC to centralize and control the liquidation of a greater number of such positions in the event of a Sponsored Member or Sponsoring Member's default. Doing so would help protect against the risk that an uncoordinated liquidation of the positions by multiple counterparties to the defaulting member would cause a fire sale of positions that negatively impacts the counterparties, FICC, and potentially the broader financial system.

One commenter requested greater information than FICC provided in the Notice regarding whether the proposed rule change would benefit the market.[57] Specifically, the commenter stated that the actual impact of the proposed rule change is unknown and the proposed rule change could increase concentration risk at FICC.[58] The Commission believes the proposed rule change is designed to protect investors and the public interest as expanding the Sponsored Membership program would include independent risk management designed to help account for any increased concentration risk. While the actual impact of the proposed rule change cannot be known, prior expansion of the Sponsored Membership program provides insight into the likely effect of future expansions of the program. Specifically, prior expansion has led to exponential growth in incremental cash investment in FICC.[59] Similarly, although the greater activity in a Sponsoring Member Account would likely increase the exposure to FICC from a Netting Member default, FICC would help account for this risk by individually margining each Sponsored Member.

By better enabling FICC to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions and protect investors and the public interest, as described above, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act.[60]

B. Consistency With Section 17A(b)(3)(I) of the Exchange Act

Section 17A(b)(3)(I) of the Exchange Act requires that the rules of a clearing agency do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.[61] As discussed above, FICC is proposing a number of changes to expand the Sponsored Membership program. The proposed changes are designed to (i) remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions and (ii) protect investors and the public interest, consistent with Section 17A(b)(3)(F) of the Exchange Act.[62]

A commenter expressed concerns about the ability of Netting Members that are not affiliated with a bank to participate as Sponsoring Members due to VaR margin requirements.[63] Specifically, separate VaR charges for each Sponsored Member will likely limit wide adoption of Sponsored Membership to those Netting Members that have a low cost of capital.[64] Likewise, the commenter expressed concern that expanding Sponsored Membership might increase the Capped Contingency Liquidity Facility (''CCLF'')[65] responsibilities of other Netting Members if the liquidity needs of the largest Netting Members grow substantially.[66] Conversely, one Commenter supported the proposed framework of risk management outlined in the proposal as appropriate to ensure proper risk controls and integrity with the FICC environment.[67]

The Commission understands that the impact of the cost of meeting a margin or CCLF requirement would depend, in part, on each Netting Member's specific business model and that some Netting Members could satisfy the increase at a lower cost than others. For example, when the Commission originally approved the CCLF, the Commission's approval was based in part on the Commission's belief that FICC appropriately sought to mitigate the relative burdens on Netting Members that present relatively less liquidity risk

[53] *See* FICC Response Letter at 4–6.

[54] *See* IDTA Letter at 3–5.

[55] *See* FICC Response Letter at 6–7.

[56] *See* FICC Response Letter at 8.

[57] *See* IDTA Letter at 3–5.

[58] *See id.*

[59] *See* FICC Response Letter at 8.

[60] 15 U.S.C. 78q–1(b)(3)(F).

[61] 15 U.S.C. 78q–1(b)(3)(I).

[62] *See* 15 U.S.C. 78q–1(b)(3)(F).

[63] *See* Ronin Letter at 6.

[64] *Id.*

[65] CCLF is a rules-based, member-funded, committed repo facility designed to ensure that FICC has sufficient liquid resources to satisfy its cash settlement obligations in the event of the default of the participant family that would generate FICC's largest aggregate payment obligation. Rule 22A, Section 2a, *supra* note 7. FICC designed the CCLF funding obligations to be generally proportionate to the liquidity needs that members present to FICC. *See* Securities Exchange Act Release No. 82090 (November 15, 2017), 82 FR 55427 (November 21, 2017) (SR–FICC–2017–002) (''CCLF Approval Order'').

[66] *See* Ronin Letter at 6.

[67] *See* SIFMA Letter at 1.

to FICC by only requiring them to contribute their allotted share of the Aggregate Regular Amount, which is allocated among all Netting Members, but Netting Members with larger obligations are required to contribute a larger amount.[68]

As a result, the Commission believes that any competitive burden imposed by the proposed changes would not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.[69]

FICC proposes that while it would provide a netting benefit to a Sponsoring Member's offsetting positions at FICC, FICC would individually margin each Sponsored Member as FICC novates and guarantees the settlement of each Sponsored Member's position. Likewise, to the extent the CCLF were to potentially increase as a result of Sponsored Member activity, the CCLF is designed so that requirements are in proportion to the liquidity exposure that each Netting Member presents to GSD. It is necessary for FICC to collect margin requirements and impose liquidity requirements to help ensure FICC can complete settlement in the event of a Netting Member default. Similarly, it is appropriate to assess individual members VaR Charges and CCLF requirement based upon the guarantee and liquidity risks that FICC assumes based upon the member's position.

Therefore, the Commission believes that the proposed rule change is consistent with Section 17A(b)(3)(I) of the Exchange Act, as the proposal would not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.[70]

A. Consistency With Rule 17Ad–22(e)(18) of the Exchange Act

Rule 17Ad–22(e)(18) under the Act requires that FICC establish, implement, maintain and enforce written policies and procedures reasonably designed to establish objective, risk-based, and publicly disclosed criteria for participation, which permit fair and open access by direct and, where relevant, indirect participants and other financial market utilities, require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency, and monitor compliance with such participation requirements on an ongoing basis.[71]

As described above, the proposed rule change would expand the Sponsored Membership program eligibility. The proposed rule change to expand Sponsoring Member eligibility would establish objective, risk-based, and publicly disclosed criteria for additional types of Netting Members to participate in FICC as Sponsoring Members. As described above, FICC could impose greater financial requirements on an applicant to become a Category 2 Sponsoring Member as they may have substantially less capital than a Category 1 Sponsoring Member. Likewise, the proposed rule change would also impose an activity limit on a Category 2 Sponsoring Member's Sponsored Member activity. Moreover, FICC would reserve the right to require each Sponsoring Member, or any Netting Member applicant to become such, to furnish to FICC such adequate assurances of its financial responsibility and operational capability. Each of these proposed changes would assist FICC in requiring Netting Members to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency.

As described above, commenters argued that the proposed rule change should specify under what qualitative standards Category 2 Sponsoring Members would be evaluated and what additional financial requirements and assurances FICC could impose on them.[72] FICC stated that it believes it is appropriate to evaluate all Category 2 Sponsoring Member applicants on a case-by-case basis as applicants can vary widely in terms of their organization structures, capitalizations, and the nature and volume of activity they are interested in centrally clearing through FICC.[73]

The Commission believes that the limited discretion in the publicly disclosed criteria for participation is consistent with Rule 17Ad–22(e)(18) as it is design to help ensure sufficient financial resources and robust operational capacity by Netting Members. In expanding Sponsored Membership, FICC must account for the risk of Category 2 Sponsoring Members and their Sponsored Members defaulting to FICC. As the entities eligible for Category 2 Sponsoring Membership are diverse, the Commission believes that flexibility in reviewing applicants on a case-by-case basis would help FICC account for this default risk. Therefore, the Commission finds that the proposal is consistent Rule 17Ad–22(e)(18) under the Act

V. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act[74] and the rules and regulations promulgated thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[75] that proposed rule change SR–FICC–2018–013, be, and hereby is, *approved.*[76]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[77]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–06527 Filed 4–3–19; 8:45 am]

BILLING CODE 8011–01–P

[68] *See* CCLF Approval Order, 82 FR at 55430.

[69] 15 U.S.C. 78q–1(b)(3)(I).

[70] 15 U.S.C. 78q–1(b)(3)(I).

[71] 17 CFR 240.17Ad–22(e)(18).

[72] *See* Ronin Letter at 5; SIFMA Letter at 2–3.

[73] *See* FICC Response Letter at 4–6.

[74] 15 U.S.C. 78q–1.

[75] 15 U.S.C. 78s(b)(2).

[76] In approving the proposed rule change, the Commission considered the proposals' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[77] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85466; File No. SR–CboeEDGX–2019–013]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Amend Rule 21.5, Interpretation and Policy .01 To Specify That Replacement Issues May Be Added to the Penny Pilot Program (''Pilot'') on a Quarterly Basis, Without Altering the Expiration Date of the Pilot, Which Is June 30, 2019

March 29, 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 March 22, 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 and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') proposes to amend Rule 21.5, Interpretation and Policy .01 to specify that replacement issues may be added to the Penny Pilot Program (''Pilot'') on a quarterly basis, without altering the expiration date of the Pilot, which is June 30, 2019. The text of the proposed rule change is provided below.

(additions are *italicized;* deletions are [bracketed])

* * * * *

Rules of Cboe EDGX Exchange, Inc.

* * * * *

Rule 21.5. Minimum Increments

(a)–(c) (No changes).

Interpretations and Policies

01 The Exchange will operate a pilot program set to expire on June 30, 2019 to permit options classes to be quoted and traded in increments as low as $.01. The Exchange will specify which options trade in such pilot, and in what increments, in Information Circulars distributed to Members and posted on the Exchange's website. The Exchange may replace any penny pilot issues that have been delisted with the next most actively traded multiply listed options classes that are not yet included in the penny pilot, based on trading activity in the previous six months. The replacement issues may be added to the penny pilot on the second trading day *in the first month of each quarter* [following January 1, 2019].

* * * * *

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 Exchange proposes to amend Rule 21.5, Interpretation and Policy .01, regarding the Pilot, to specify that replacement issues may be added to the Pilot on a quarterly basis, without altering the expiration date of the Pilot, which is June 30, 2019. The Exchange recently filed to extend the Pilot until June 30, 2019 (from December 31, 2018) and also updated the rule text to provide that replacement issues may be added to the Pilot on the second trading day following January 1, 2019.[5] The Rule authorizes the Exchange to replace any options issues in the Pilot that have been delisted with the next most actively traded multiply listed options classes that are not yet included in the Program, based on trading activity in the previous six months.[6] The Exchange proposes to modify Rule 21.5, Interpretation and Policy .01 to allow the Exchange to add replacement issues (for Pilot issues that have been delisted) on a quarterly basis. The Exchange added replacement issues in January 2019 and would be able to add eligible replacement issues in April, July and October. The Exchange believes this change would allow the Exchange to update issues eligible for the Pilot (by replacing delisted issues) on a quarterly basis (as opposed to semi-annual) and would enable further analysis of the Pilot and a determination of how the Pilot should be structured in the future.

As is the case today, the Exchange will determine replacement issues based on trading activity in the previous six months (the ''six-month lookback'') but will not use the month immediately preceding the addition of a replacement to the Pilot. Thus, a replacement class to be added on the second trading day following April 1, 2019 would be identified based on The Option Clearing Corporation's trading volume data from September 1, 2018 through February 28, 2019.[7] The Exchange believes the six-month lookback is appropriate because this time period would help reduce the impact of unusual trading activity as a result of unique market events, such as a corporate action (*i.e.,* it would result in a more reliable measure of average daily trading volume than would a shorter period).

This filing does not propose any substantive changes to the Pilot: All classes currently participating will remain the same and all minimum increments will remain unchanged. The Exchange believes the benefits to public customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh the increase in quote traffic.

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. Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes the proposal to allow the addition of replacement issues the Pilot on a quarterly basis would result in a more current list of Pilot-eligible issues and would enable further analysis of the Pilot, including for a determination of how the Pilot should be structured in the future. Further, the Exchange believes the six-month lookback is appropriate because this time period would help reduce the impact of

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 84946 (December 21, 2018), 83 FR 67757 (December 31, 2018) (SR–CboeEDGX–2018–061). On January 3, 2019, the Exchange added new issues to replace delisted Pilot issues, as announced by Product Update, available here, *http://markets.cboe.com/resources/product_update/2019/Penny-Pilot-Replacement-Classes-for-January-3-2019-Updated.pdf.*

[6] See Rule 21.5, Interpretation and Policy .01.

[7] The Exchange will continue to announce the replacement issues by Exchange Notice. *See supra* note 5.

unusual trading activity as a result of unique market events, such as a corporate action (*i.e.,* it would result in a more reliable measure of average daily trading volume than would a shorter period). Thus, the Exchange believes this proposal would promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in facilitating transactions in securities, and remove impediments to and perfect the mechanisms of a free and open market and a national market system.

The Exchange notes that it is not making any other substantive changes to the Pilot, other than modifying the timing for replacement issues and therefore the Exchange will continue to participate in a program that has been viewed as beneficial to traders, investors and public customers and viewed as successful by the other options exchanges participating in it. The Exchange believes that the Pilot would continue to promote just and equitable principles of trade by enabling public customers and other market participants to express their true prices to buy and sell options to the benefit of all market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that allowing the Exchange to add replacement issues to the Pilot on a quarterly basis would make the list of Pilot-eligible issues more current and would enable further analysis of the Pilot, including for a determination of how the Pilot should be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection. The Pilot Program is an industry-wide initiative supported by all other option exchanges. The Exchange believes that the proposed change would allow for continued competition between Exchange market participants trading similar products as their counterparts on other exchanges, while at the same time allowing the Exchange to continue to compete for order flow with other exchanges in option issues trading as part of the Pilot.

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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [8] and Rule 19b–4(f)(6) thereunder.[9] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [10] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[11] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The change will allow the Exchange to add classes to the pilot that are actively traded at the start of the second quarter (*i.e.,* in April 2019) and replace those that have been delisted and are no longer trading on a more frequent basis. This will help ensure that the top 363 most actively traded, multiply-listed classes are included in the Pilot, which will enable further analysis of the Pilot.[12]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [13] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeEDGX–2019–013 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–2019–013. 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

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78s(b)(2)(B).

business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–CboeEDGX–2019–013 and should be submitted on or before April 25, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–06524 Filed 4–3–19; 8:45 am]

BILLING CODE 8011–01–P

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85467; File No. SR–Phlx–2019–05]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Specify Replacement Issues That May Be Added to the Penny Pilot in Rule 1034

March 29, 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 March 21, 2019, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes amend Rule 1034, ''Minimum Increments,'' to specify replacement issues that may be added to the Penny Pilot (''Pilot'') on a quarterly basis, without altering the expiration date of the Pilot, which is June 30, 2019.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqphlx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 1034, ''Minimum Increments,'' to specify that replacement issues may be added to the Pilot on a quarterly basis, without altering the expiration date of the Pilot, which is June 30, 2019. The Exchange recently filed to extend the Pilot until June 30, 2019 (from December 31, 2018) and also updated the rule text to provide that replacement issues may be added to the Pilot on the second trading day following January 1, 2019.[3] Currently, Rule 1034(a)(i)(B) permits the Exchange to replace any penny pilot issues that have been delisted with the next most actively traded multiply listed options classes that are not yet included in the penny pilot, based on trading activity in the previous six months.

The Exchange proposes to amend Rule 1034(a)(i)(B) to permit the Exchange to add replacement issues for Pilot issues that have been delisted on a quarterly basis. The Exchange added replacement issues in January 2019, pursuant to Rule 1034 and, with this proposal, would add eligible replacement issues in April, July and October 2019. The Exchange believes this change would allow the Exchange to update issues eligible for the Pilot by replacing delisted issues on a quarterly basis as opposed to semi-annual and would enable further analysis of the Pilot and a determination of how the Pilot should be structured in the future.

As is the case today, the Exchange will determine replacement issues based on trading activity in the previous six months (the ''six month lookback'') but will not use the month immediately preceding the addition of a replacement to the Pilot. Thus, a replacement class to be added on the second trading day following April 1, 2019 would be identified based on The Option Clearing Corporation's trading volume data from September 1, 2018 through February 28, 2019.[4] The Exchange believes the six month lookback is appropriate because this time period would help reduce the impact of unusual trading activity as a result of unique market events, such as a corporate action (*i.e.,* it would result in a more reliable measure of average daily trading volume than would a shorter period).

This filing does not propose any substantive changes to the Pilot. All classes currently participating will remain the same and all minimum increments will remain unchanged. The Exchange believes the benefits to public customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh the increase in quote traffic.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[5] Specifically, the proposed rule change is consistent with Section 6(b)(5) of the Act,[6] because it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes the proposal to allow the addition of replacement issues the Pilot on a quarterly basis would result in the a more current list of Pilot eligible issues and would enable further analysis of the Pilot, including for a determination of how the Pilot should be structured in the future. Further, the Exchange believes the six month lookback is appropriate because this time period would help reduce the

[3] *See* Securities Exchange Act Release No. 84961 (December 26, 2018), 84 FR 838 (January 31, 2019) (SR–Phlx–2018–84). On January 3, 2019, the Exchange added new issues to replace delisted Pilot issues, as announced by Options Trader Alert #2018–48.

[4] The Exchange would announce any replacement issues via an Options Trader Alert. *See* Rule 1034(a)(i)(B).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

impact of unusual trading activity as a result of unique market events, such as a corporate action (*i.e.,* it would result in a more reliable measure of average daily trading volume than would a shorter period). The Exchange believes this proposal would promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in facilitating transactions in securities, and remove impediments to and perfect the mechanisms of a free and open market and a national market system.

The Exchanges notes that it not making any other substantive changes to the Pilot, other than modifying the timing for replacement issues and therefore the Exchange will continue to participate in a program that has been viewed as beneficial to traders, investors and public customers and viewed as successful by the other options exchanges participating in it. The Exchange believes that the Pilot would continue to promote just and equitable principles of trade by enabling public customers and other market participants to express their true prices to buy and sell options to the benefit of all market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[7] the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Specifically, the Exchange believes that allowing the Exchange to add replacement issues to the Pilot on a quarterly basis would make the list of Pilot-eligible issues more current and would enable further analysis of the Pilot, including for a determination of how the Pilot should be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection. The Pilot Program is an industry-wide initiative supported by all other option exchanges. The Exchange believes that the proposed change would allow for continued competition between Exchange market participants trading similar products as their counterparts on other exchanges, while at the same time allowing the Exchange to continue to compete for order flow with other exchanges in option issues trading as part of the Pilot.

[7] 15 U.S.C. 78f(b)(8).

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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[10] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[11] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The change will allow the Exchange to add classes to the pilot that are actively traded at the start of the second quarter (*i.e.,* in April 2019) and replace those that have been delisted and are no longer trading on a more frequent basis. This will help ensure that the top 363 most actively traded, multiply-listed classes are included in the Pilot, which will enable further analysis of the Pilot.[12]

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[13] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2019–05 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2019–05. 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

[13] 15 U.S.C. 78s(b)(2)(B).

filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–Phlx–2019–05 and should be submitted on or before April 25, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–06525 Filed 4–3–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85465; File No. SR–CboeBZX–2019–020]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Amend Rule 21.5, Interpretation and Policy .01 To Specify That Replacement Issues May Be Added to the Penny Pilot Program (''Pilot'') on a Quarterly Basis, Without Altering the Expiration Date of the Pilot, Which Is June 30, 2019

March 29, 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 March 22, 2019, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') proposes to amend Rule 21.5, Interpretation and Policy .01 to specify that replacement issues may be added to the Penny Pilot Program (''Pilot'') on a quarterly basis, without altering the expiration date of the Pilot, which is June 30, 2019. The text of the proposed rule change is provided below.

(additions are *italicized;* deletions are [bracketed])

* * * * *

Rules of Cboe BZX Exchange, Inc.

* * * * *

Rule 21.5. Minimum Increments

(a)–(c) (No changes).

Interpretations and Policies

.01 The Exchange will operate a pilot program set to expire on June 30, 2019 to permit options classes to be quoted and traded in increments as low as $.01. The Exchange will specify which options trade in such pilot, and in what increments, in Information Circulars distributed to Members and posted on the Exchange's website. The Exchange may replace any penny pilot issues that have been delisted with the next most actively traded multiply listed options classes that are not yet included in the penny pilot, based on trading activity in the previous six months. The replacement issues may be added to the penny pilot on the second trading day *in the first month of each quarter* [following January 1, 2019].

* * * * *

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 21.5, Interpretation and Policy .01, regarding the Pilot, to specify that replacement issues may be added to the Pilot on a quarterly basis, without altering the expiration date of the Pilot, which is June 30, 2019. The Exchange recently filed to extend the Pilot until June 30, 2019 (from December 31, 2018) and also updated the rule text to provide that replacement issues may be added to the Pilot on the second trading day following January 1, 2019.[5] The Rule authorizes the Exchange to replace any options issues in the Pilot that have been delisted with the next most actively traded multiply listed options classes that are not yet included in the Program, based on trading activity in the previous six months.[6] The Exchange proposes to modify Rule 21.5, Interpretation and Policy .01 to allow the Exchange to add replacement issues (for Pilot issues that have been delisted) on a quarterly basis. The Exchange added replacement issues in January 2019 and would be able to add eligible replacement issues in April, July and October. The Exchange believes this change would allow the Exchange to update issues eligible for the Pilot (by replacing delisted issues) on a quarterly basis (as opposed to semi-annual) and would enable further analysis of the Pilot and a determination of how the Pilot should be structured in the future.

As is the case today, the Exchange will determine replacement issues based on trading activity in the previous six months (the ''six-month lookback'') but will not use the month immediately preceding the addition of a replacement to the Pilot. Thus, a replacement class to be added on the second trading day following April 1, 2019 would be identified based on The Option Clearing Corporation's trading volume data from September 1, 2018 through February 28, 2019.[7] The Exchange believes the six-month lookback is appropriate because this time period would help reduce the impact of unusual trading activity as a

[5] *See* Securities Exchange Act Release No. 84953 (December 26, 2018), 84 FR 845 (January 31, 2019) (SR–CboeBZX–2018–093). On January 3, 2019, the Exchange added new issues to replace delisted Pilot issues, as announced by Product Update, available here, *http://markets.cboe.com/resources/product_update/2019/Penny-Pilot-Replacement-Classes-for-January-3-2019-Updated.pdf.*

[6] See Rule 21.5, Interpretation and Policy .01.

[7] The Exchange will continue to announce the replacement issues by Exchange Notice. *See supra* note 5.

result of unique market events, such as a corporate action (*i.e.,* it would result in a more reliable measure of average daily trading volume than would a shorter period).

This filing does not propose any substantive changes to the Pilot: All classes currently participating will remain the same and all minimum increments will remain unchanged. The Exchange believes the benefits to public customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh the increase in quote traffic.

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. Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes the proposal to allow the addition of replacement issues the Pilot on a quarterly basis would result in a more current list of Pilot-eligible issues and would enable further analysis of the Pilot, including for a determination of how the Pilot should be structured in the future. Further, the Exchange believes the six-month lookback is appropriate because this time period would help reduce the impact of unusual trading activity as a result of unique market events, such as a corporate action (*i.e.,* it would result in a more reliable measure of average daily trading volume than would a shorter period). Thus, the Exchange believes this proposal would promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in facilitating transactions in securities, and remove impediments to and perfect the mechanisms of a free and open market and a national market system.

The Exchange notes that it is not making any other substantive changes to the Pilot, other than modifying the timing for replacement issues and therefore the Exchange will continue to participate in a program that has been viewed as beneficial to traders, investors and public customers and viewed as successful by the other options exchanges participating in it. The Exchange believes that the Pilot would continue to promote just and equitable principles of trade by enabling public customers and other market participants to express their true prices to buy and sell options to the benefit of all market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that allowing the Exchange to add replacement issues to the Pilot on a quarterly basis would make the list of Pilot-eligible issues more current and would enable further analysis of the Pilot, including for a determination of how the Pilot should be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection. The Pilot Program is an industry-wide initiative supported by all other option exchanges. The Exchange believes that the proposed change would allow for continued competition between Exchange market participants trading similar products as their counterparts on other exchanges, while at the same time allowing the Exchange to continue to compete for order flow with other exchanges in option issues trading as part of the Pilot.

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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [8] and Rule 19b–4(f)(6) thereunder.[9] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [10] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[11] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The change will allow the Exchange to add classes to the pilot that are actively traded at the start of the second quarter (*i.e.,* in April 2019) and replace those that have been delisted and are no longer trading on a more frequent basis. This will help ensure that the top 363 most actively traded, multiply-listed classes are included in the Pilot, which will enable further analysis of the Pilot.[12]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

under Section 19(b)(2)(B) [13] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2019–020 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeBZX–2019–020. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–CboeBZX–2019–020 and should be submitted on or before April 25, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–06523 Filed 4–3–19; 8:45 am]

BILLING CODE 8011–01–P

[13] 15 U.S.C. 78s(b)(2)(B).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85461; File No. SR–NYSEArca–2019–01]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change Relating to the Listing and Trading of Shares of the Bitwise Bitcoin ETF Trust Under NYSE Arca Rule 8.201–E

March 29, 2019.

On January 28, 2019, NYSE Arca, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares of the Bitwise Bitcoin ETF Trust under NYSE Arca Rule 8.201–E. The proposed rule change was published for comment in the **Federal Register** on February 15, 2019.[3] As of March 28, 2019, the Commission has received 21 comment letters on the proposed rule change.[4]

Section 19(b)(2) of the Act [5] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is April 1, 2019. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[6] designates May 16, 2019 as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NYSEArca–2019–01).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–06520 Filed 4–3–19; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 85093 (Feb. 11, 2019), 84 FR 4589 (Feb. 15, 2019).

[4] Comments on the proposed rule change can be found at: *https://www.sec.gov/comments/sr-nysearca-2019-01/srnysearca201901.htm.*

[5] 15 U.S.C. 78s(b)(2).

[6] *Id.*

[7] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85451; File No. SR–NYSEAMER–2019–03]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change To Amend Its NYSE American Equities Price List and the NYSE American Options Fee Schedule Related to Co-Location Services

March 29, 2019.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on March 15, 2019, NYSE American LLC (the ''Exchange'' or ''NYSE American'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its NYSE American Equities Price List (''Price List'') and the NYSE American Options Fee Schedule (''Fee Schedule'') related to co-location services to provide access to the execution system of Global OTC. The proposed change is available on the Exchange's website at

www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Price List and Fee Schedule related to co-location [4] services offered by the Exchange to provide Users [5] with access to the execution system of Global OTC (the ''Global OTC System''). Global OTC is an alternative trading system (''ATS'') that facilitates transactions in over-the-counter equity securities.[6]

The Exchange proposes to implement the rule change on the first day of the month after it becomes operative. The Exchange will announce the implementation date through a customer notice.

As set forth in the Price List and Fee Schedule, the Exchange charges fees for connectivity to the execution systems of third party markets and other content service providers (''Third Party Systems'').[7] The Exchange has an indirect interest in Global OTC because it is owned by the Exchange's ultimate parent, Intercontinental Exchange, Inc.[8] The Exchange proposes to treat Global OTC as a Third Party System and add it to the list of Third Party Systems set forth in the Price List and Fee Schedule.

As with the current Third Party Systems, in order to obtain access to the Global OTC System, the User would enter into an agreement with Global OTC, pursuant to which Global OTC would charge the User for access to the Global OTC System. Once the Exchange receives authorization from Global OTC, the Exchange would establish a connection between the User and the Global OTC System.[9]

As with the existing connections to Third Party Systems, the Exchange proposes to charge a monthly recurring fee for connectivity to the Global OTC System. The Exchange does not propose to change the current fee, which is for connectivity only.[10]

Currently, connectivity to the Third Party Systems is over the internet protocol (''IP'') network, a local area network available in the data center.[11] Users would have two options for connecting to the OTC Global System: over the IP network or the Liquidity Center Network (''LCN''), the other local area network available in the data center.[12] Accordingly, the Exchange proposes to amend the third sentence of the paragraph under ''Connectivity to Third Party Systems'' in the Price List and Fee Schedule to state that ''[c]onnectivity to Third Party Systems is over the IP network, with the exception that Users can connect to Global OTC over the IP network or LCN.''

The proposed treatment of Global OTC would be consistent with its treatment in other contexts. The Exchange also treats Global OTC as a third party with respect to connectivity to data feeds from third party markets and other content service providers (the ''Third Party Data Feeds'').[13] The Exchange proposes that Users could connect to the Global OTC System over the IP network or LCN: This is substantially the same as with Third Party Data Feeds, where ''[c]onnectivity . . . is over the IP network, with the exception that Users can connect to Global OTC and ICE Data Global Index over the IP network or LCN.'' [14]

The Exchange would provide access to the Global OTC System (''Access'') as a convenience to Users. Use of Access is completely voluntary, and it is the Exchange's understanding that currently third party options are available to a User to access the Global OTC System. The Exchange is not aware of any impediment to additional third parties offering such access. With respect to third parties that presently offer, or in the future opt to offer, access to the Global OTC Systems, a User may access such services through the Secure Financial Transaction Infrastructure (''SFTI'') network, a third party telecommunication network, third party wireless network, a cross connect, or a combination thereof to access such services and products through a connection to an access center outside the data center (which could be a SFTI access center, a third-party access center, or both), another User, or a third party vendor.

Establishing a User's access to the Global OTC System would not give the Exchange any right to use the Global OTC System. Connectivity to the Global OTC System would not provide access or order entry to the Exchange's execution system, and a User's connection to the Global OTC System would not be through the Exchange's execution system.

General

As is the case with all Exchange co-location arrangements, (i) neither a User nor any of the User's customers would be permitted to submit orders directly to the Exchange unless such User or

[4] The Exchange initially filed rule changes relating to its co-location services with the Commission in 2010. *See* Securities Exchange Act Release No. 62961 (September 21, 2010), 75 FR 59299 (September 27, 2010) (SR–NYSEAmex–2010–80). The Exchange operates a data center in Mahwah, New Jersey (the ''data center'') from which it provides co-location services to Users.

[5] For purposes of the Exchange's co-location services, a ''User'' means any market participant that requests to receive co-location services directly from the Exchange. *See* Securities Exchange Act Release No. 76009 (September 29, 2015), 80 FR 60213 (October 5, 2015) (SR–NYSEMKT–2015–67). As specified in the Price List and Fee Schedule, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates New York Stock Exchange LLC (''NYSE LLC''), NYSE Arca, Inc. (''NYSE Arca'') and NYSE National, Inc. (''NYSE National'' and together, the ''Affiliate SROs''). *See* Securities Exchange Act Release No. 70176 (August 13, 2013), 78 FR 50471 (August 19, 2013) (SR–NYSEMKT–2013–67).

[6] *See* 17 CFR 242.300(a). An ATS is a trading system that meets the definition of ''exchange'' under federal securities laws but is not required to register as a national securities exchange if the ATS operates under an exemption provided under the Act.

[7] *See* Securities Exchange Act Release No. 80309 (March 24, 2017), 82 FR 15725 (March 30, 2017) (SR–NYSEMKT–2016–63) (notice of filing of Partial Amendment No. 4 and order granting accelerated approval of a proposed rule change, as modified by Amendment Nos. 1 through 4, to amend the co-location services offered by the Exchange to add certain access and connectivity fees).

[8] *See* Securities Exchange Act Release No. 79672 (December 22, 2016), 81 FR 96080 (December 29, 2016) (SR–NYSEMKT–2016–63), fn. 21 (notice of filing of Amendments Nos. 2 and 3 to proposed rule change amending the co-location services offered by the Exchange to add certain access and connectivity fees).

[9] *See* 82 FR 15725, *supra* note 7, at 15727.

[10] *Id.*

[11] *See* Securities Exchange Act Release No. 74220 (February 6, 2015), 80 FR 7894 (February 12, 2015) (SR–NYSEMKT–2015–08) (notice of filing and immediate effectiveness of proposed rule change to include IP network connections).

[12] *See* Securities Exchange Act Release No. 79728 (January 4, 2017), 82 FR 3035 (January 10, 2017) (SR–NYSEMKT–2016–126) (notice of filing and immediate effectiveness of proposed rule change amending the Exchange's Price List and Fee Schedule related to colocation services to increase LCN and IP Network fees and add a description of access to trading and execution services and connectivity to included data products).

[13] *See* 81 FR 96080, *supra* note 8, at 96082.

[14] Price List, at 22, and Fee Schedule, at 46; *see* 81 FR 96080, *supra* note 8, at note 20.

customer is a member organization, a Sponsored Participant or an agent thereof (*e.g.,* a service bureau providing order entry services); (ii) use of the co-location services proposed herein would be completely voluntary and available to all Users on a non-discriminatory basis; [15] and (iii) a User would only incur one charge for the particular co-location service described herein, regardless of whether the User connects only to the Exchange or to the Exchange and one or more of the Affiliate SROs.[16]

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed fee change is consistent with Section 6(b) of the Act,[17] in general, and furthers the objectives of Sections 6(b)(5) of the Act,[18] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed changes would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because, by offering access to the Global OTC System, the Exchange would give each User additional options for addressing its access needs, responding to User demand for access options. Providing additional services would help each User tailor its data center operations to the requirements of its business operations by allowing it to select the form and latency of access that best suits its needs.

The Exchange would provide Access as a convenience to Users. Use of Access is completely voluntary, and it is the Exchange's understanding that currently third party options are available to a User to access the Global OTC System. The Exchange is not aware of any impediment to additional third parties offering such access. With respect to third parties that presently offer, or in the future opt to offer, access to the Global OTC Systems, a User may access such services through the SFTI network, a third party telecommunication network, third party wireless network, a cross connect, or a combination thereof to access such services and products through a connection to an access center outside the data center (which could be a SFTI access center, a third-party access center, or both), another User, or a third party vendor.

The Exchange believes that the proposed change would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because the proposed treatment of Global OTC would be consistent with its treatment in other contexts. The Exchange also treats Global OTC as a third party with respect to connectivity to Third Party Data Feeds.[19] The Exchange proposes that Users could connect to the Global OTC System over the IP network or LCN: This is substantially the same as with Third Party Data Feeds, where connectivity is over the IP network, with the exception that Users can connect to Global OTC and one other Third Party Data Feed over the IP network or LCN.[20]

The Exchange also believes that the proposed fee change is consistent with Section 6(b)(4) of the Act,[21] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed fee change is consistent with Section 6(b)(4) of the Act for multiple reasons. The Exchange operates in a highly competitive market in which exchanges offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. Accordingly, fees charged for co-location services are constrained by the active competition for the order flow of, and other business from, such market participants. If a particular exchange charges excessive fees for co-location services, affected market participants will opt to terminate their co-location arrangements with that exchange, and adopt a possible range of alternative strategies, including placing their servers in a physically proximate location outside the exchange's data center (which could be a competing exchange), or pursuing strategies less dependent upon the lower exchange-to-participant latency associated with co-location. Accordingly, the exchange charging excessive fees would stand to lose not only co-location revenues but also the liquidity of the formerly co-located trading firms, which could have additional follow-on effects on the market share and revenue of the affected exchange.

The Exchange believes that the proposed charges would be reasonable, equitably allocated and not unfairly discriminatory because it would treat connectivity to the Global OTC System the same as connectivity to the execution system of other ATSs. Currently, the Third Party Systems include two ATSs.[22]

The Exchange believes that the additional service proposed herein would be equitably allocated and not unfairly discriminatory because, in addition to Access being completely voluntary, it would be available to all Users on an equal basis (*i.e.,* the same Access would be available to all Users). All Users that voluntarily selected to receive Access would be charged the same amount for the same service. Users that opted to use Access would not receive access that is not available to all Users, as all market participants that contracted with Global OTC would receive access.

The Exchange believes that the proposed charges would be reasonable, equitably allocated and not unfairly discriminatory because the Exchange would offer the Access as a convenience to Users, but in order to do so must provide, maintain and operate the data

[15] As is currently the case, Users that receive co-location services from the Exchange will not receive any means of access to the Exchange's trading and execution systems that is separate from, or superior to, that of other Users. In this regard, all orders sent to the Exchange enter the Exchange's trading and execution systems through the same order gateway, regardless of whether the sender is co-located in the data center or not. In addition, co-located Users do not receive any market data or data service product that is not available to all Users, although Users that receive co-location services normally would expect reduced latencies in sending orders to, and receiving market data from, the Exchange.

[16] *See* 78 FR 50471, *supra* note 5, at 50471. NYSE, NYSE Arca and NYSE National have submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSE–2019–07, SR–NYSEArca–2019–07, and SR–NYSENat-2019–03.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

[19] *Supra* note 13.

[20] *Supra* note 14.

[21] 15 U.S.C. 78f(b)(4).

[22] Credit Suisse and OTC Markets have ATSs. *See* Commission list of ATSs at *https://www.sec.gov/foia/docs/atslist.htm.*

center facility hardware and technology infrastructure. The Exchange must handle the installation, administration, monitoring, support and maintenance of such services, including by responding to any production issues. Since the inception of co-location, the Exchange has made numerous improvements to the network hardware and technology infrastructure and has established additional administrative controls. The Exchange has expanded the network infrastructure to keep pace with the increased number of services available to Users, including resilient and redundant feeds. In addition, in order to provide Access, the Exchange would maintain multiple connections to the Global OTC System, allowing the Exchange to provide resilient and redundant connections; adapt to any changes made by Global OTC; and cover any applicable fees charged by Global OTC, such as port fees. In addition, Users would not be required to use any of their bandwidth for Access unless they wish to do so.

The Exchange believes the fees for Access are reasonable because they allow the Exchange to defray or cover the costs associated with offering Users Access while providing Users the convenience of receiving such Access within co-location, helping them tailor their data center operations to the requirements of their business operations.

For the reasons above, the proposed changes would not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[23] the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because all of the proposed services are completely voluntary.

The Exchange believes that providing Users with additional options for access to the Global OTC Systems would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because such proposed Access would satisfy User demand for access options. The Exchange would provide Access as a convenience to Users. Use of Access is completely voluntary, and it is the Exchange's understanding that currently third party options are available to a User to access the Global OTC System. The Exchange is not aware of any impediment to additional third parties offering such access. With respect to third parties that presently offer, or in the future opt to offer, access to the Global OTC Systems, a User may access such services through the SFTI network, a third party telecommunication network, third party wireless network, a cross connect, or a combination thereof to access such services and products through a connection to an access center outside the data center (which could be a SFTI access center, a third-party access center, or both), another User, or a third party vendor.

Users that opt to use the proposed Access would not receive access that is not available to all Users, as all market participants that contract with Global OTC may receive access. In this way, the proposed changes would enhance competition by helping Users tailor their Access to the needs of their business operations by allowing them to select the form and latency of access and connectivity that best suits their needs.

The Exchange believes that the proposed change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because it would treat connectivity to the Global OTC System the same as connectivity to the execution system of other ATSs. Specifically, they would all be Third Party Systems subject to the same fees. In addition, the proposed treatment of Global OTC would be consistent with its treatment in other contexts. The Exchange also treats Global OTC as a third party with respect to connectivity to Third Party Data Feeds.[24]

Currently, connectivity to the Third Party Systems is over the IP network. The Exchange believes that allowing Users to connect to the Global OTC System over either the IP network or LCN would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Currently, the Third Party Systems include two ATS, of which the Exchange believes OTC Markets is the most comparable to Global OTC, although Global OTC is substantially the smaller of the two.[25] While an LCN connection provides lower latency than the IP network, that latency difference is relevant, as a practical matter, only for connections within the Mahwah data center, where the Global OTC System is located. When connecting to a comparable, competing ATS located in another data center, such as OTC Markets, Users within the Mahwah data center would incur geographical latency that would dwarf any differences between the IP network and LCN. Furthermore, it is the Exchange's understanding that market participants trading in non-NMS securities tend to be less latency sensitive due to the smaller pools of liquidity in the over-the-counter markets.

Allowing Users to connect to the Global OTC System would be consistent with the treatment of Third Party Data Feeds, where connectivity is over the IP network, with the exception that Users can connect to Global OTC and one other Third Party Data Feed over the IP network or LCN.[26]

The Exchange operates in a highly competitive market in which exchanges offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. Accordingly, fees charged for co-location services are constrained by the active competition for the order flow of, and other business from, such market participants. If a particular exchange charges excessive fees for co-location services, affected market participants will opt to terminate their co-location arrangements with that exchange, and adopt a possible range of alternative strategies, including placing their servers in a physically proximate location outside the exchange's data center (which could be a competing exchange), or pursuing strategies less dependent upon the lower exchange-to-participant latency associated with co-location. Accordingly, the exchange charging excessive fees would stand to lose not only co-location revenues but also the liquidity of the formerly co-located trading firms, which could have additional follow-on effects on the market share and revenue of the affected exchange. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

[23] 15 U.S.C. 78f(b)(8).

[24] *Supra* note 13.

[25] Both Global OTC and the OTC Markets are inter-dealer quotation systems. The third is the OTC Bulletin Board, a facility of the Financial Industry Regulatory Authority. Global OTC's market share is approximately 10% of average daily volume of trades of over-the-counter equities, compared to OTC Markets' market share of approximately 90% of average daily volume of trades. *See https://www.globalotc.com/brokers/market-share.*

[26] *Supra* note 14.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [27] and Rule 19b–4(f)(6) thereunder.[28] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[29]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [30] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEAMER–2019–03 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAMER–2019–03. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAMER–2019–03 and should be submitted on or before April 25, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–06509 Filed 4–3–19; 8:45 am]

BILLING CODE 8011–01–P

[27] 15 U.S.C. 78s(b)(3)(A)(iii).

[28] 17 CFR 240.19b–4(f)(6).

[29] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[30] 15 U.S.C. 78s(b)(2)(B).

[31] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85448; File No. SR–ISE–2019–08]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Supplementary Material .01 to Rule 710 To Specify Replacement Issues That May Be Added to the Penny Pilot on a Quarterly Basis Without Altering the Expiration Date of the Pilot

March 29, 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 March 26, 2019, Nasdaq ISE, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Supplementary Material .01 to Rule 710, ''Minimum Increments,'' to specify replacement issues that may be added to the Penny Pilot (''Pilot'') on a quarterly basis, without altering the expiration date of the Pilot, which is June 30, 2019.

The text of the proposed rule change is available on the Exchange's website at *http://ise.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Commentary .01 to Rule 710, ''Minimum Increments,'' to specify that replacement issues may be added to the Pilot on a quarterly basis, without altering the expiration date of the Pilot, which is June 30, 2019. The Exchange recently filed to extend the Pilot until June 30, 2019 (from December 31, 2018) and also updated the rule text to provide that replacement issues may be added to the Pilot on the second trading day following January 1, 2019.[3] Currently, Commentary .01 to Rule 710 permits the Exchange to replace any penny pilot issues that have been delisted with the next most actively traded multiply listed options classes that are not yet included in the penny pilot, based on trading activity in the previous six months.

The Exchange proposes to amend Commentary .01 to Rule 710 to permit the Exchange to add replacement issues for Pilot issues that have been delisted on a quarterly basis. The Exchange added replacement issues in January 2019, pursuant to Rule 710 and, with this proposal, would add eligible replacement issues in April, July and October 2019. The Exchange believes this change would allow the Exchange to update issues eligible for the Pilot by replacing delisted issues on a quarterly basis as opposed to semi-annual and would enable further analysis of the Pilot and a determination of how the Pilot should be structured in the future.

As is the case today, the Exchange will determine replacement issues based on trading activity in the previous six months (the ''six month lookback'') but will not use the month immediately preceding the addition of a replacement to the Pilot. Thus, a replacement class to be added on the second trading day following April 1, 2019 would be identified based on The Option Clearing Corporation's trading volume data from September 1, 2018 through February 28, 2019.[4] The Exchange believes the six month lookback is appropriate because this time period would help reduce the impact of unusual trading activity as a result of unique market events, such as a corporate action (*i.e.,* it would result in a more reliable measure of average daily trading volume than would a shorter period).

This filing does not propose any substantive changes to the Pilot. All classes currently participating will remain the same and all minimum increments will remain unchanged. The Exchange believes the benefits to Priority Customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh the increase in quote traffic.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[5] Specifically, the proposed rule change is consistent with Section 6(b)(5) of the Act,[6] because it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes the proposal to allow the addition of replacement issues the Pilot on a quarterly basis would result in the a more current list of Pilot eligible issues and would enable further analysis of the Pilot, including for a determination of how the Pilot should be structured in the future. Further, the Exchange believes the six month lookback is appropriate because this time period would help reduce the impact of unusual trading activity as a result of unique market events, such as a corporate action (*i.e.,* it would result in a more reliable measure of average daily trading volume than would a shorter period). The Exchange believes this proposal would promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in facilitating transactions in securities, and remove impediments to and perfect the mechanisms of a free and open market and a national market system.

The Exchanges notes that it not making any other substantive changes to the Pilot, other than modifying the timing for replacement issues and therefore the Exchange will continue to participate in a program that has been viewed as beneficial to traders, investors and public customers and viewed as successful by the other options exchanges participating in it. The Exchange believes that the Pilot would continue to promote just and equitable principles of trade by enabling Priority Customers and other market participants to express their true prices to buy and sell options to the benefit of all market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[7] the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Specifically, the Exchange believes that allowing the Exchange to add replacement issues to the Pilot on a quarterly basis would make the list of Pilot-eligible issues more current and would enable further analysis of the Pilot, including for a determination of how the Pilot should be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection. The Pilot Program is an industry-wide initiative supported by all other option exchanges. The Exchange believes that the proposed change would allow for continued competition between Exchange market participants trading similar products as their counterparts on other exchanges, while at the same time allowing the Exchange to continue to compete for order flow with other exchanges in option issues trading as part of the Pilot.

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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9] Because the

[3] *See* Securities Exchange Act Release No. 84958 (December 26, 2018), 84 FR 875 (January 31, 2019) (SR–ISE–2018–101). On January 3, 2019, the Exchange added new issues to replace delisted Pilot issues, as announced by Options Trader Alert #2018–48.

[4] The Exchange would announce any replacement issues via an Options Trader Alert. *See* Commentary .01 to Rule 710.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78f(b)(8).

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [10] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[11] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The change will allow the Exchange to add classes to the pilot that are actively traded at the start of the second quarter (*i.e.,* in April 2019) and replace those that have been delisted and are no longer trading on a more frequent basis. This will help ensure that the top 363 most actively traded, multiply-listed classes are included in the Pilot, which will enable further analysis of the Pilot.[12]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [13] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ISE–2019–08 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2019–08. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–ISE–2019–08 and should be submitted on or before April 25, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–06506 Filed 4–3–19; 8:45 am]

BILLING CODE 8011–01–P

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78s(b)(2)(B).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85475; File No. SR–CboeBZX–2019–004]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To List and Trade Shares of SolidX Bitcoin Shares Issued by the VanEck SolidX Bitcoin Trust, Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares

March 29, 2019.

On January 30, 2019, Cboe BZX Exchange, Inc. (''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares of the SolidX Bitcoin Shares under BZX Rule 14.11(e)(4). The proposed rule change was published for comment in the **Federal Register** on February 20, 2019.[3] The Commission has received comment letters on the proposed rule change.[4]

Section 19(b)(2) of the Act [5] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is April 6, 2019. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[6] designates May 21, 2019 as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 85119 (Feb. 13, 2019), 84 FR 5140 (Feb. 20, 2019).

[4] Comments on the proposed rule change can be found at: *https://www.sec.gov/comments/sr-cboebzx-2019-004/srcboebzx2019004.htm.*

[5] 15 U.S.C. 78s(b)(2).

[6] *Id.*

disapprove, the proposed rule change (File No. SR–CboeBZX–2019–004).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–06510 Filed 4–3–19; 8:45 am]

BILLING CODE 8011–01–P

[7] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33434]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

March 29, 2019.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of March 2019. A copy of each 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. An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail.

Hearing requests should be received by the SEC by 5:30 p.m. on April 23, 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: The Commission: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

FOR FURTHER INFORMATION CONTACT: Shawn Davis, Branch Chief, at (202) 551–6413 or Chief Counsel's Office at (202) 551–6821; SEC, Division of Investment Management, Chief Counsel's Office, 100 F Street NE, Washington, DC 20549–8010.

Columbia Funds Master Investment Trust, LLC [File No. 811–09347]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On December 13, 2013, applicant made liquidating distributions to its shareholders based on net asset value. Expenses of $8,750 incurred in connection with the liquidation were paid by the applicant's investment adviser.

Filing Dates: The application was filed on December 20, 2018, and amended on March 26, 2019.

Applicant's Address: 225 Franklin Street, Boston, Massachusetts 02110.

Columbia Funds Variable Insurance Trust I [File No. 811–08481]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Columbia Variable Portfolio—Select International Equity Fund, Columbia Variable Portfolio—Large Cap Growth Fund, and Variable Portfolio—Loomis Sayles Growth Fund, each a series of Columbia Funds Variable Series Trust II, and on April 29, 2016, made a final distribution to its shareholders based on net asset value. Expenses of $408,738 incurred in connection with the reorganization were paid by the applicant and applicant's investment adviser.

Filing Dates: The application was filed on December 20, 2018.

Applicant's Address: 225 Franklin Street, Boston, Massachusetts 02110.

Cushing American Renaissance Fund [File No. 811–22813]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Dates: The application was filed on December 14, 2018.

Applicant's Address: 8117 Preston Road, Suite 440, Dallas, Texas 75225.

Horizons ETF Trust I [File No. 811–22732]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Global X DAX Germany ETF, Global X NASDAQ 100 Covered Call ETF, and Global X S&P 500 Covered Call EFT, each a series of Global X Funds, and on December 24, 2018, made a final distribution to its shareholders based on net asset value. Expenses of approximately $385,253 incurred in connection with the reorganization were paid by the acquiring fund's investment adviser.

Filing Dates: The application was filed on February 6, 2019.

Applicant's Address: 625 Madison Avenue, 3rd Floor, New York, New York 10022.

Oppenheimer Global Real Estate Fund [File No. 811–22771]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On August 27, 2018, applicant made liquidating distributions to its shareholders based on net asset value. Expenses of $18,521 incurred in connection with the liquidation were paid by the applicant's investment adviser.

Filing Dates: The application was filed on December 28, 2018, and amended on March 18, 2019.

Applicant's Address: 6803 South Tucson Way, Centennial, Colorado 80112.

Seligman TargetHorizon ETF Portfolios, Inc. [File No. 811–21788]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On November 30, 2010, applicant made liquidating distributions to its shareholders based on net asset value. Expenses of $28,750 incurred in connection with the liquidation were paid by the applicant's investment adviser.

Filing Dates: The application was filed on December 20, 2018, and amended on March 26, 2019.

Applicant's Address: 225 Franklin Street, Boston, Massachusetts 02110.

Seligman Value Fund Series, Inc. [File No. 811–08031]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Columbia Select Large-Cap Value Fund and Columbia Select Smaller-Cap Value Fund, each a series of Columbia Funds Series Trust II, and on March 7, 2011, made a final distribution to its shareholders based on net asset value. Expenses of $39,288 incurred in connection with the reorganization were paid by the applicant's investment adviser.

Filing Dates: The application was filed on December 20, 2018.

Applicant's Address: 225 Franklin Street, Boston, Massachusetts 02110.

T. Rowe Price California Tax-Free Income Trust [File No. 811–04525]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to T. Rowe Price

State Tax-Free Funds, Inc. and, on October 30, 2017, made a final distribution to its shareholders based on net asset value. Expenses of $33,892.24 incurred in connection with the reorganization were paid by the applicant's investment adviser.

Filing Date: The application was filed on September 26, 2018, and amended on December 18, 2018 and December 20, 2018.

Applicant's Address: 100 East Pratt Street, Baltimore, Maryland 21202.

VanEck Coastland Online Finance Term Fund [File No. 811–23077]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Dates: The application was filed on December 19, 2018, and amended on March 21, 2019.

Applicant's Address: 666 Third Avenue, 9th Floor, New York, New York 10017.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–06497 Filed 4–3–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85455; File No. SR–PEARL–2019–11]

Self-Regulatory Organizations: Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by Miami PEARL, LLC To Amend Exchange Rule 510, Minimum Price Variations and Minimum Trading Increments

March 29, 2019.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 22, 2019, Miami PEARL, LLC (''MIAX PEARL'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend Rule 510, Minimum Price Variations and Minimum Trading Increments, to specify that replacement classes may be added to the Penny Pilot Program on a quarterly basis, without altering the expiration date of the Penny Pilot Program, which is June 30, 2019.[3]

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/pearl* at MIAX PEARL's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. *Purpose*

The Exchange proposes to amend Rule 510, Minimum Price Variations and Minimum Trading Increments, Interpretations and Policies .01, regarding the Penny Pilot Program, to specify that replacement classes may be added to the Penny Pilot Program on a quarterly basis, without altering the expiration date of the Penny Pilot Program, which is June 30, 2019.

The Exchange recently filed to extend the Penny Pilot Program until June 30, 2019 (from December 31, 2018) and also updated the rule text to provide that replacement issues may be added to the Pilot on the second trading day following January 1, 2019.[4]

The proposed rule authorizes the Exchange to replace any option classes in the Penny Pilot Program that have been delisted with the next most actively traded multiply listed options classes that are not yet included in the Penny Pilot Program, based on trading activity in the previous six months.[5] The Exchange now proposes to modify Rule 510, Minimum Price Variations and Minimum Trading Increments, Interpretations and Policies .01, to allow the Exchange to add replacement classes (for Penny Pilot Program classes that have been delisted) on a quarterly basis. The Exchange added replacement classes in January 2019 and would add eligible replacement classes in April, July, and October. The Exchange believes this change would allow the Exchange to update option classes eligible for the Penny Pilot Program (by replacing delisted classes) on a quarterly basis (as opposed to semi-annual) and would enable further analysis of the Penny Pilot Program and a determination of how the Penny Pilot Program should be structured in the future.

As is the case today, the Exchange will determine replacement classes based on trading activity in the previous six months (the ''six month lookback'') but will not use the month immediately preceding the addition of a replacement to the Penny Pilot Program. Thus, a replacement class to be added on the second trading day following April 1, 2019 would be identified based on The Option Clearing Corporation's trading volume data from September 1, 2018 through February 28, 2019.[6] The Exchange believes the six month lookback is appropriate because this time period would help reduce the impact of unusual trading activity as a result of unique market events, such as a corporate action (*i.e.,* it would result in a more reliable measure of average daily trading volume than would a shorter period).

This filing does not propose any substantive changes to the Penny Pilot Program: All classes currently participating will remain the same and all minimum increments will remain unchanged. The Exchange believes the benefits to public customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh the increase in quote traffic. In addition, the proposed change would align the Exchange's rules to the rules of competing options exchanges that

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 84865 (December 19, 2018), 83 FR 66813 (December 27, 2018) (SR–PEARL–2018–26).

[4] *See id.*

[5] *See* Exchange Rule 510, Interpretations and Policies .01.

[6] Exchange Rule 510, Interpretations and Policies .01 continues to obligate the Exchange to announce the replacement classes by a Listings Alert.

have proposed rules consistent with this proposal.[7]

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act[8] in general, and furthers the objectives of Section 6(b)(5) of the Act[9] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[10] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. In particular, the Exchange believes the proposal to allow the addition of replacement classes to the Penny Pilot Program on a quarterly basis would result in a more current list of Penny Pilot Program-eligible classes and would enable further analysis of the Penny Pilot Program, including for a determination of how the Penny Pilot Program should be structured in the future. Further, the Exchange believes the six month lookback is appropriate because this time period would help reduce the impact of unusual trading activity as a result of unique market events, such as a corporate action (*i.e.,* it would result in a more reliable measure of average daily trading volume than would a shorter period). Thus, the Exchange believes this proposal would promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in facilitating transactions in securities, and remove impediments to and perfect the mechanisms of a free and open market and a national market system.

The Exchange notes that it is not making any other substantive changes to the Penny Pilot Program, other than modifying the timing for replacement issues and therefore the Exchange will continue to participate in a program that has been viewed as beneficial to traders, investors and public customers and viewed as successful by the other options exchanges participating in it.

The Exchange believes that the Penny Pilot Program would continue to promote just and equitable principles of trade by enabling public customers and other market participants to express their true prices to buy and sell options to the benefit of all market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that allowing the Exchange to add replacement classes to the Penny Pilot Program on a quarterly basis would make the list of Penny Pilot Program-eligible classes more current and would enable further analysis of the Penny Pilot Program, including for a determination of how the Penny Pilot Program should be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection. The Penny Pilot Program is an industry-wide initiative supported by all other option exchanges. The Exchange believes that the proposed change would allow for continued competition between Exchange market participants trading similar products as their counterparts on other exchanges, while at the same time allowing the Exchange to continue to compete for order flow with other exchanges in option issues trading as part of the Penny Pilot Program.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[13] normally does not become operative prior to 30 days after the date of the 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. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The change will allow the Exchange to add classes to the pilot that are actively traded at the start of the second quarter (*i.e.,* in April 2019) and replace those that have been delisted and are no longer trading on a more frequent basis. This will help ensure that the top 363 most actively traded, multiply-listed classes are included in the Pilot, which will enable further analysis of the Pilot.[15]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[16] of the Act to determine whether the proposed rule change should be approved or disapproved.

[7] *See* Securities Exchange Act Release Nos. 85348 (March 18, 2019), 84 FR 10860 (March 22, 2019) (SR–NYSEAMER–2019–05); 85363 (March 19, 2019), (SR–NYSEARCA–2019–13) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Commentary .02 to Rule 6.72–O to specify that replacement issues may be added to the Penny Pilot quarterly).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] *Id.*

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 15 U.S.C. 78s(b)(2)(B).

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-PEARL–2019–11 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–PEARL–2019–11. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website *(http://www.sec.gov/rules/sro.shtml).*

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–PEARL–2019–11 and should be submitted on or before April 25, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–06514 Filed 4–3–19; 8:45 am]

BILLING CODE 8011–01–P

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85469; File No. SR–MIAX–2019–16]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 510, Minimum Price Variations and Minimum Trading Increments

March 29, 2019.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 22, 2019, Miami International Securities Exchange, LLC (''MIAX Options'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend Rule 510, Minimum Price Variations and Minimum Trading Increments, to specify that replacement classes may be added to the Penny Pilot Program on a quarterly basis, without altering the expiration date of the Penny Pilot Program, which is June 30, 2019.[3]

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/* at MIAX Options' principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 510, Minimum Price Variations and Minimum Trading Increments, Interpretations and Policies .01, regarding the Penny Pilot Program, to specify that replacement classes may be added to the Penny Pilot Program on a quarterly basis, without altering the expiration date of the Penny Pilot Program, which is June 30, 2019.

The Exchange recently filed to extend the Penny Pilot Program until June 30, 2019 (from December 31, 2018) and also updated the rule text to provide that replacement classes may be added to the Penny Pilot Program on the second trading day following January 1, 2019.[4]

The proposed rule authorizes the Exchange to replace any option classes in the Penny Pilot Program that have been delisted with the next most actively traded multiply listed option classes that are not yet included in the Penny Pilot Program, based on trading activity in the previous six months.[5] The Exchange now proposes to modify Rule 510, Minimum Price Variations and Minimum Trading Increments, Interpretations and Policies .01, to allow the Exchange to add replacement classes (for Penny Pilot Program classes that have been delisted) on a quarterly basis. The Exchange added replacement classes in January 2019 and would add eligible replacement classes in April, July, and October. The Exchange believes this change would allow the Exchange to update option classes eligible for the Penny Pilot Program (by replacing delisted classes) on a quarterly basis (as opposed to semi-annual) and would enable further analysis of the Penny Pilot Program and a determination of how the Penny Pilot Program should be structured in the future.

As is the case today, the Exchange will determine replacement classes based on trading activity in the previous

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 84864 (December 19, 2018), 83 FR 66778 (December 27, 2018) (SR–MIAX–2018–38).

[4] *See id.*

[5] *See* Exchange Rule 510, Interpretations and Policies .01.

six months (the ''six month lookback'') but will not use the month immediately preceding the addition of a replacement to the Penny Pilot Program. Thus, a replacement class to be added on the second trading day following April 1, 2019 would be identified based on The Option Clearing Corporation's trading volume data from September 1, 2018 through February 28, 2019.[6] The Exchange believes the six month lookback is appropriate because this time period would help reduce the impact of unusual trading activity as a result of unique market events, such as a corporate action (*i.e.,* it would result in a more reliable measure of average daily trading volume than would a shorter period).

This filing does not propose any substantive changes to the Penny Pilot Program: All classes currently participating will remain the same and all minimum increments will remain unchanged. The Exchange believes the benefits to public customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh the increase in quote traffic. In addition, the proposed change would align the Exchange's rules with the rules of competing options exchanges that have proposed rules consistent with this proposal.[7]

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act[8] in general, and furthers the objectives of Section 6(b)(5) of the Act[9] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[10] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. In particular, the Exchange believes the proposal to allow the addition of replacement classes to the Penny Pilot Program on a quarterly basis would result in a more current list of Penny Pilot Program-eligible classes and would enable further analysis of the Penny Pilot Program, including for a determination of how the Penny Pilot Program should be structured in the future. Further, the Exchange believes the six month lookback is appropriate because this time period would help reduce the impact of unusual trading activity as a result of unique market events, such as a corporate action (*i.e.,* it would result in a more reliable measure of average daily trading volume than would a shorter period). Thus, the Exchange believes this proposal would promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in facilitating transactions in securities, and remove impediments to and perfect the mechanisms of a free and open market and a national market system.

The Exchange notes that it is not making any other substantive changes to the Penny Pilot Program, other than modifying the timing for replacement classes and therefore the Exchange will continue to participate in a program that has been viewed as beneficial to traders, investors and public customers and viewed as successful by the other options exchanges participating in it.

The Exchange believes that the Penny Pilot Program would continue to promote just and equitable principles of trade by enabling public customers and other market participants to express their true prices to buy and sell options to the benefit of all market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that allowing the Exchange to add replacement classes to the Penny Pilot Program on a quarterly basis would make the list of Penny Pilot Program-eligible classes more current and would enable further analysis of the Penny Pilot Program, including for a determination of how the Penny Pilot Program should be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection. The Penny Pilot Program is an industry-wide initiative supported by all other option exchanges. The Exchange believes that the proposed change would allow for continued competition between Exchange market participants trading similar products as their counterparts on other exchanges, while at the same time allowing the Exchange to continue to compete for order flow with other exchanges in option classes trading as part of the Penny Pilot Program.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[13] normally does not become operative prior to 30 days after the date of the 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. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The

[6] Exchange Rule 510, Interpretations and Policies .01 continues to obligate the Exchange to announce the replacement classes by a Listings Alert.

[7] *See* Securities Exchange Act Release Nos. 85348 (March 18, 2019), 84 FR 10860 (March 22, 2019) (SR–NYSEAMER–2019–05); 85363 (March 19, 2019), (SR–NYSEARCA–2019–13) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Commentary .02 to Rule 6.72–O to specify that replacement issues may be added to the Penny Pilot quarterly).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] *Id.*

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

change will allow the Exchange to add classes to the pilot that are actively traded at the start of the second quarter (*i.e.,* in April 2019) and replace those that have been delisted and are no longer trading on a more frequent basis. This will help ensure that the top 363 most actively traded, multiply-listed classes are included in the Pilot, which will enable further analysis of the Pilot.[15]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[16] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email *to rule-comments@sec.gov.* Please include File Number SR–MIAX–2019–16 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–MIAX–2019–16. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml.*)

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–MIAX–2019–16 and should be submitted on or before April 25, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–06526 Filed 4–3–19; 8:45 am]

BILLING CODE 8011–01–P

[15] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 15 U.S.C. 78s(b)(2)(B).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85462; File No. SR–GEMX–2019–02]

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Supplementary Material .01 to Rule 710 To Specify Replacement Issues That May Be Added to the Penny Pilot on a Quarterly Basis Without Altering the Expiration Date of the Pilot

March 29, 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 March 21, 2019, Nasdaq GEMX, LLC (''GEMX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Supplementary Material .01 to Rule 710, ''Minimum Increments,'' to specify replacement issues that may be added to the Penny Pilot (''Pilot'') on a quarterly basis, without altering the expiration date of the Pilot, which is June 30, 2019.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqgemx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Commentary .01 to Rule 710, ''Minimum Increments,'' to specify that replacement issues may be added to the Pilot on a quarterly basis, without altering the expiration date of the Pilot, which is June 30, 2019. The Exchange recently filed to extend the Pilot until June 30, 2019 (from December 31, 2018) and also updated the rule text to provide that replacement issues may be added to the Pilot on the second trading day following January 1, 2019.[3] Currently, Commentary .01 to Rule 710 permits the Exchange to replace any penny pilot issues that have been delisted with the next most actively traded multiply listed options classes that are not yet included in the penny

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 84955 (December 26, 2018), 84 FR 859 (January 31, 2019) (SR–GEMX–2018–44). On January 3, 2019, the Exchange added new issues to replace delisted Pilot issues, as announced by Options Trader Alert #2018–48.

pilot, based on trading activity in the previous six months.

The Exchange proposes to amend Commentary .01 to Rule 710 to permit the Exchange to add replacement issues for Pilot issues that have been delisted on a quarterly basis. The Exchange added replacement issues in January 2019, pursuant to Rule 710 and, with this proposal, would add eligible replacement issues in April, July and October 2019. The Exchange believes this change would allow the Exchange to update issues eligible for the Pilot by replacing delisted issues on a quarterly basis as opposed to semi-annual and would enable further analysis of the Pilot and a determination of how the Pilot should be structured in the future.

As is the case today, the Exchange will determine replacement issues based on trading activity in the previous six months (the ''six month lookback'') but will not use the month immediately preceding the addition of a replacement to the Pilot. Thus, a replacement class to be added on the second trading day following April 1, 2019 would be identified based on The Option Clearing Corporation's trading volume data from September 1, 2018 through February 28, 2019.[4] The Exchange believes the six month lookback is appropriate because this time period would help reduce the impact of unusual trading activity as a result of unique market events, such as a corporate action (*i.e.,* it would result in a more reliable measure of average daily trading volume than would a shorter period).

This filing does not propose any substantive changes to the Pilot. All classes currently participating will remain the same and all minimum increments will remain unchanged. The Exchange believes the benefits to Priority Customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh the increase in quote traffic.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[5] Specifically, the proposed rule change is consistent with Section 6(b)(5) of the Act,[6] because it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes the proposal to allow the addition of replacement issues the Pilot on a quarterly basis would result in the a more current list of Pilot eligible issues and would enable further analysis of the Pilot, including for a determination of how the Pilot should be structured in the future. Further, the Exchange believes the six month lookback is appropriate because this time period would help reduce the impact of unusual trading activity as a result of unique market events, such as a corporate action (*i.e.,* it would result in a more reliable measure of average daily trading volume than would a shorter period). The Exchange believes this proposal would promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in facilitating transactions in securities, and remove impediments to and perfect the mechanisms of a free and open market and a national market system.

The Exchanges notes that it not making any other substantive changes to the Pilot, other than modifying the timing for replacement issues and therefore the Exchange will continue to participate in a program that has been viewed as beneficial to traders, investors and public customers and viewed as successful by the other options exchanges participating in it. The Exchange believes that the Pilot would continue to promote just and equitable principles of trade by enabling Priority Customers and other market participants to express their true prices to buy and sell options to the benefit of all market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[7] the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Specifically, the Exchange believes that allowing the Exchange to add replacement issues to the Pilot on a quarterly basis would make the list of Pilot-eligible issues more current and would enable further analysis of the Pilot, including for a determination of how the Pilot should be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection. The Pilot Program is an industry-wide initiative supported by all other option exchanges. The Exchange believes that the proposed change would allow for continued competition between Exchange market participants trading similar products as their counterparts on other exchanges, while at the same time allowing the Exchange to continue to compete for order flow with other exchanges in option issues trading as part of the Pilot.

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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[10] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[11] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of

[4] The Exchange would announce any replacement issues via an Options Trader Alert. *See* Commentary .01 to Rule 710.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78f(b)(8).

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

investors and the public interest. The change will allow the Exchange to add classes to the pilot that are actively traded at the start of the second quarter (*i.e.,* in April 2019) and replace those that have been delisted and are no longer trading on a more frequent basis. This will help ensure that the top 363 most actively traded, multiply-listed classes are included in the Pilot, which will enable further analysis of the Pilot.[12]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[13] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–GEMX–2019–02 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–GEMX–2019–02. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–GEMX–2019–02 and should be submitted on or before April 25, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–06521 Filed 4–3–19; 8:45 am]

BILLING CODE 8011–01–P

[12] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78s(b)(2)(B).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85452; File No. SR–NASDAQ–2019–020]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change The Nasdaq Options Market LLC Rules at Chapter VI, Section 5

March 29, 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 March 21, 2019, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend The Nasdaq Options Market LLC Rules (''NOM'') at Chapter VI, Section 5, ''Minimum Increments,'' to specify replacement issues that may be added to the Penny Pilot (''Pilot'') on a quarterly basis, without altering the expiration date of the Pilot, which is June 30, 2019.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Chapter VI, Section 5, ''Minimum Increments,'' to specify that replacement issues may be added to the Pilot on a quarterly basis, without altering the expiration date of the Pilot, which is June 30, 2019. The Exchange recently filed to extend the Pilot until June 30, 2019 (from December 31, 2018) and also updated the rule text to provide that replacement issues may be added to the Pilot on the second trading day following January 1, 2019.[3] Currently, Commentary .01 to Rule 710 permits the Exchange to replace any penny pilot issues that have been delisted with the next most actively traded multiply listed options classes that are not yet included in the penny pilot, based on trading activity in the previous six months.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 84960 (December 26, 2018), 84 FR 843 (January 31, 2019) (SR–NASDAQ–2018–107). On January 3, 2019, the Exchange added new issues to replace delisted Pilot issues, as announced by Options Trader Alert #2018–48.

The Exchange proposes to amen Commentary .01 to Rule 710 to permit the Exchange to add replacement issues for Pilot issues that have been delisted on a quarterly basis. The Exchange added replacement issues in January 2019, pursuant to Rule 710 and, with this proposal, would add eligible replacement issues in April, July and October 2019. The Exchange believes this change would allow the Exchange to update issues eligible for the Pilot by replacing delisted issues on a quarterly basis as opposed to semi-annual and would enable further analysis of the Pilot and a determination of how the Pilot should be structured in the future.

As is the case today, the Exchange will determine replacement issues based on trading activity in the previous six months (the ''six month lookback'') but will not use the month immediately preceding the addition of a replacement to the Pilot. Thus, a replacement class to be added on the second trading day following April 1, 2019 would be identified based on The Option Clearing Corporation's trading volume data from September 1, 2018 through February 28, 2019.[4] The Exchange believes the six month lookback is appropriate because this time period would help reduce the impact of unusual trading activity as a result of unique market events, such as a corporate action (*i.e.,* it would result in a more reliable measure of average daily trading volume than would a shorter period).

This filing does not propose any substantive changes to the Pilot. All classes currently participating will remain the same and all minimum increments will remain unchanged. The Exchange believes the benefits to Priority Customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh the increase in quote traffic.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[5] Specifically, the proposed rule change is consistent with Section 6(b)(5) of the Act,[6] because it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes the proposal to allow the addition of replacement issues the Pilot on a quarterly basis would result in the a more current list of Pilot eligible issues and would enable further analysis of the Pilot, including for a determination of how the Pilot should be structured in the future. Further, the Exchange believes the six month lookback is appropriate because this time period would help reduce the impact of unusual trading activity as a result of unique market events, such as a corporate action (*i.e.,* it would result in a more reliable measure of average daily trading volume than would a shorter period). The Exchange believes this proposal would promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in facilitating transactions in securities, and remove impediments to and perfect the mechanisms of a free and open market and a national market system.

The Exchanges notes that it not making any other substantive changes to the Pilot, other than modifying the timing for replacement issues and therefore the Exchange will continue to participate in a program that has been viewed as beneficial to traders, investors and public customers and viewed as successful by the other options exchanges participating in it. The Exchange believes that the Pilot would continue to promote just and equitable principles of trade by enabling Priority Customers and other market participants to express their true prices to buy and sell options to the benefit of all market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[7] the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Specifically, the Exchange believes that allowing the Exchange to add replacement issues to the Pilot on a quarterly basis would make the list of Pilot-eligible issues more current and would enable further analysis of the Pilot, including for a determination of how the Pilot should be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection. The Pilot Program is an industry-wide initiative supported by all other option exchanges. The Exchange believes that the proposed change would allow for continued competition between Exchange market participants trading similar products as their counterparts on other exchanges, while at the same time allowing the Exchange to continue to compete for order flow with other exchanges in option issues trading as part of the Pilot.

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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[10] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[11] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The

[4] The Exchange would announce any replacement issues via an Options Trader Alert. *See* Commentary .01 to Rule 710.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78f(b)(8).

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

change will allow the Exchange to add classes to the pilot that are actively traded at the start of the second quarter (*i.e.,* in April 2019) and replace those that have been delisted and are no longer trading on a more frequent basis. This will help ensure that the top 363 most actively traded, multiply-listed classes are included in the Pilot, which will enable further analysis of the Pilot.[12]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[13] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2019–020 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2019–020. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–NASDAQ–2019–020 and should be submitted on or before April 25, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–06511 Filed 4–3–19; 8:45 am]

BILLING CODE 8011–01–P

[12] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78s(b)(2)(B).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85457; File No. SR–EMERALD–2019–16]

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 510, Minimum Price Variations and Minimum Trading Increments

March 29, 2019.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 22, 2019, MIAX Emerald, LLC (''MIAX Emerald'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend Exchange Rule 510, Minimum Price Variations and Minimum Trading Increments, to specify that replacement classes may be added to the Penny Pilot Program on a quarterly basis, without altering the expiration date of the Penny Pilot Program, which is June 30, 2019.[3]

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/emerald* at MIAX Emerald's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 510, Minimum Price Variations and Minimum Trading Increments, Interpretations and Policies .01, regarding the Penny Pilot Program, to specify that replacement classes may be added to the Penny Pilot Program on a quarterly basis, without altering the expiration date of the Penny Pilot Program, which is June 30, 2019.

The Exchange recently filed to extend the Penny Pilot Program until June 30, 2019 (from December 31, 2018) and also updated the rule text to delete the sentence regarding replacement classes being added to the Penny Pilot Program on the second trading day following July 1, 2018. At that time, the Exchange noted that the deletion would create a difference between the rule text of MIAX Emerald and that of the Exchange's affiliates, Miami International Securities Exchange, LLC and MIAX PEARL, LLC, however, in

[3] *See* Securities Exchange Act Release No. 85225 (March 1, 2019), 84 FR 8353 (March 7, 2019) (SR–EMERALD–2019–06).

practice there would be no difference as the second trading day following January 1, 2019 had already passed.[4] The Exchange now proposes to adopt a new sentence to the rule text about when replacement classes may be added to the Penny Pilot Program. Specifically, the Exchange proposes to add the following sentence after the last sentence of Exchange Rule 510, Interpretations and Policies .01: ''The replacement classes may be added to the penny pilot on the second trading day in the first month of each quarter.''

Exchange Rule 510 currently authorizes the Exchange to replace any option classes in the Penny Pilot Program that have been delisted with the next most actively traded multiply listed option classes that are not yet included in the Penny Pilot Program, based on trading activity in the previous six months.[5] The Exchange now proposes to modify Rule 510, Minimum Price Variations and Minimum Trading Increments, Interpretations and Policies .01, to allow the Exchange to add replacement classes (for Penny Pilot Program classes that have been delisted) on a quarterly basis. With this proposal, the Exchange would add eligible replacement classes in April, July, October of 2019, and then in January of 2020 and each subsequent quarter. The Exchange believes this change would allow the Exchange to update option classes eligible for the Penny Pilot Program (by replacing delisted classes) on a quarterly basis and would enable further analysis of the Penny Pilot Program and a determination of how the Penny Pilot Program should be structured in the future.

As is the case today, the Exchange will determine replacement classes based on trading activity in the previous six months (the ''six month lookback'') but will not use the month immediately preceding the addition of a replacement to the Penny Pilot Program. Thus, a replacement class to be added on the second trading day following April 1, 2019 would be identified based on The Option Clearing Corporation's trading volume data from September 1, 2018 through February 28, 2019.[6] The Exchange believes the six month lookback is appropriate because this time period would help reduce the impact of unusual trading activity as a result of unique market events, such as a corporate action (*i.e.,* it would result in a more reliable measure of average daily trading volume than would a shorter period).

This filing does not propose any substantive changes to the Penny Pilot Program: all classes currently participating will remain the same and all minimum increments will remain unchanged. The Exchange believes the benefits to public customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh the increase in quote traffic. In addition, the proposed change would align the Exchange with competing options exchanges that have proposed rules consistent with this proposal.[7]

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act [8] in general, and furthers the objectives of Section 6(b)(5) of the Act [9] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [10] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. In particular, the Exchange believes the proposal to allow the addition of replacement classes to the Penny Pilot Program on a quarterly basis would result in a more current list of Penny Pilot Program-eligible classes and would enable further analysis of the Penny Pilot Program, including for a determination of how the Penny Pilot Program should be structured in the future. Further, the Exchange believes the six month lookback is appropriate because this time period would help reduce the impact of unusual trading activity as a result of unique market events, such as a corporate action (*i.e.,* it would result in a more reliable measure of average daily trading volume than would a shorter period). Thus, the Exchange believes this proposal would promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in facilitating transactions in securities, and remove impediments to and perfect the mechanisms of a free and open market and a national market system.

The Exchange notes that it is not making any other substantive changes to the Penny Pilot Program, other than modifying the timing for replacement issues and therefore the Exchange will continue to participate in a program that has been viewed as beneficial to traders, investors and public customers and viewed as successful by the other options exchanges participating in it.

The Exchange believes that the Penny Pilot Program would continue to promote just and equitable principles of trade by enabling public customers and other market participants to express their true prices to buy and sell options to the benefit of all market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that allowing the Exchange to add replacement classes to the Penny Pilot Program on a quarterly basis would make the list of Penny Pilot Program-eligible classes more current and would enable further analysis of the Penny Pilot Program, including for a determination of how the Penny Pilot Program should be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection. The Penny Pilot Program is an industry-wide initiative supported by all other option exchanges. The Exchange believes that the proposed change would allow for continued competition between Exchange market participants trading similar products as their counterparts on other exchanges, while at the same time allowing the Exchange to continue to compete for order flow with other exchanges in option issues trading as part of the Penny Pilot Program.

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.

[4] *See id.*

[5] *See* Exchange Rule 510, Interpretations and Policies .01.

[6] Exchange Rule 510, Interpretations and Policies .01 continues to obligate the Exchange to announce the replacement classes by a Listings Alert.

[7] *See* Securities Exchange Act Release Nos. 85348 (March 18, 2019), 84 FR 10860 (March 22, 2019) (SR–NYSEAMER–2019–05); 85363 (March 19, 2019) (SR–NYSEARCA–2019–13) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Commentary .02 to Rule 6.72–O to specify that replacement issues may be added to the Penny Pilot quarterly).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] *Id.*

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [11] and Rule 19b–4(f)(6) thereunder.[12] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [13] normally does not become operative prior to 30 days after the date of the 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. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The change will allow the Exchange to add classes to the pilot that are actively traded at the start of the second quarter (*i.e.,* in April 2019) and replace those that have been delisted and are no longer trading on a more frequent basis. This will help ensure that the top 363 most actively traded, multiply-listed classes are included in the Pilot, which will enable further analysis of the Pilot.[15]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [16] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form *(http://www.sec.gov/rules/sro.shtml*); or
- Send an email *to rule-comments@sec.gov.* Please include File Number SR–EMERALD–2019–16 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–EMERALD–2019–16. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–EMERALD–2019–16 and should be submitted on or before April 25, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–06516 Filed 4–3–19; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 15 U.S.C. 78s(b)(2)(B).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85454; File No. SR–BX–2019–005]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Chapter VI, Section 5, "Minimum Increments"

March 29, 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 March 21, 2019, Nasdaq BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Chapter VI, Section 5, ''Minimum Increments,'' to specify replacement issues that may be added to the Penny Pilot (''Pilot'') on a quarterly basis, without altering the expiration date of the Pilot, which is June 30, 2019.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqbx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Chapter VI, Section 5, ''Minimum Increments,'' to specify that replacement issues may be added to the Pilot on a quarterly basis, without altering the expiration date of the Pilot, which is June 30, 2019. The Exchange recently filed to extend the Pilot until June 30, 2019 (from December 31, 2018) and also updated the rule text to provide that replacement issues may be added to the Pilot on the second trading day following January 1, 2019.[3] Currently, Chapter VI, Section 5(a)(3) permits the Exchange to replace any penny pilot issues that have been delisted with the next most actively traded multiply listed options classes that are not yet included in the penny pilot, based on trading activity in the previous six months.

The Exchange proposes to amend Chapter VI, Section 5(a)(3) to permit the Exchange to add replacement issues for Pilot issues that have been delisted on a quarterly basis. The Exchange added replacement issues in January 2019, pursuant to Chapter VI, Section 5 and, with this proposal, would add eligible replacement issues in April, July and October 2019. The Exchange believes this change would allow the Exchange to update issues eligible for the Pilot by replacing delisted issues on a quarterly basis as opposed to semi-annual and would enable further analysis of the Pilot and a determination of how the Pilot should be structured in the future.

As is the case today, the Exchange will determine replacement issues based on trading activity in the previous six months (the ''six month lookback'') but will not use the month immediately preceding the addition of a replacement to the Pilot. Thus, a replacement class to be added on the second trading day following April 1, 2019 would be identified based on The Option Clearing Corporation's trading volume data from September 1, 2018 through February 28, 2019.[4] The Exchange believes the six month lookback is appropriate because this time period would help reduce the impact of unusual trading activity as a result of unique market events, such as a corporate action (*i.e.,* it would result in a more reliable measure of average daily trading volume than would a shorter period).

This filing does not propose any substantive changes to the Pilot. All classes currently participating will remain the same and all minimum increments will remain unchanged. The Exchange believes the benefits to Public Customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh the increase in quote traffic.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[5] Specifically, the proposed rule change is consistent with Section 6(b)(5) of the Act,[6] because it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes the proposal to allow the addition of replacement issues the Pilot on a quarterly basis would result in the a more current list of Pilot eligible issues and would enable further analysis of the Pilot, including for a determination of how the Pilot should be structured in the future. Further, the Exchange believes the six month lookback is appropriate because this time period would help reduce the impact of unusual trading activity as a result of unique market events, such as a corporate action (*i.e.,* it would result in a more reliable measure of average daily trading volume than would a shorter period). The Exchange believes this proposal would promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in facilitating transactions in securities, and remove impediments to and perfect the mechanisms of a free and open market and a national market system.

The Exchanges notes that it not making any other substantive changes to the Pilot, other than modifying the timing for replacement issues and therefore the Exchange will continue to participate in a program that has been viewed as beneficial to traders, investors and public customers and viewed as successful by the other options exchanges participating in it. The Exchange believes that the Pilot would continue to promote just and equitable principles of trade by enabling Public Customers and other market participants to express their true prices to buy and sell options to the benefit of all market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[7] the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Specifically, the Exchange believes that allowing the Exchange to add replacement issues to the Pilot on a quarterly basis would make the list of Pilot-eligible issues more current and would enable further analysis of the Pilot, including for a determination of how the Pilot should be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection. The Pilot Program is an industry-wide initiative supported by all other option exchanges. The Exchange believes that the proposed change would allow for continued competition between Exchange market participants trading similar products as their counterparts on other exchanges, while at the same time allowing the Exchange to continue to compete for order flow with other exchanges in option issues trading as part of the Pilot.

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.

[3] *See* Securities Exchange Act Release No. 84952 (December 26, 2018), 84 FR 871 (January 31, 2019) (SR–BX–2018–067). On January 3, 2019, the Exchange added new issues to replace delisted Pilot issues, as announced by Options Trader Alert #2018–48.

[4] The Exchange would announce any replacement issues via an Options Trader Alert. *See* Chapter VI, Section 5(a)(3).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78f(b)(8).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [8] and Rule 19b–4(f)(6) thereunder.[9] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [10] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[11] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The change will allow the Exchange to add classes to the pilot that are actively traded at the start of the second quarter (*i.e.,* in April 2019) and replace those that have been delisted and are no longer trading on a more frequent basis. This will help ensure that the top 363 most actively traded, multiply-listed classes are included in the Pilot, which will enable further analysis of the Pilot.[12]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [13] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–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–BX–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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–BX–2019–005 and should be submitted on or before April 25, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–06513 Filed 4–3–19; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78s(b)(2)(B).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85456; File No. SR–NYSE–2019–07]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Price List Related to Co-Location Services

March 29, 2019.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on March 15, 2019, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's Price List related to co-location services to provide access to the execution system of Global OTC. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of,

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Price List related to co-location [4] services offered by the Exchange to provide Users [5] with access to the execution system of Global OTC (the ''Global OTC System''). Global OTC is an alternative trading system (''ATS'') that facilitates transactions in over-the-counter equity securities.[6]

The Exchange proposes to implement the rule change on the first day of the month after it becomes operative. The Exchange will announce the implementation date through a customer notice.

As set forth in the Price List, the Exchange charges fees for connectivity to the execution systems of third party markets and other content service providers (''Third Party Systems'').[7] The Exchange has an indirect interest in Global OTC because it is owned by the Exchange's ultimate parent, Intercontinental Exchange, Inc.[8] The Exchange proposes to treat Global OTC as a Third Party System and add it to the list of Third Party Systems set forth in the Price List.

As with the current Third Party Systems, in order to obtain access to the Global OTC System, the User would enter into an agreement with Global OTC, pursuant to which Global OTC would charge the User for access to the Global OTC System. Once the Exchange receives authorization from Global OTC, the Exchange would establish a connection between the User and the Global OTC System.[9]

As with the existing connections to Third Party Systems, the Exchange proposes to charge a monthly recurring fee for connectivity to the Global OTC System. The Exchange does not propose to change the current fee, which is for connectivity only.[10]

Currently, connectivity to the Third Party Systems is over the internet protocol (''IP'') network, a local area network available in the data center.[11] Users would have two options for connecting to the OTC Global System: Over the IP network or the Liquidity Center Network (''LCN''), the other local area network available in the data center.[12] Accordingly, the Exchange proposes to amend the third sentence of the paragraph under ''Connectivity to Third Party Systems'' in the Price List to state that ''[c]onnectivity to Third Party Systems is over the IP network, with the exception that Users can connect to Global OTC over the IP network or LCN.''

The proposed treatment of Global OTC would be consistent with its treatment in other contexts. The Exchange also treats Global OTC as a third party with respect to connectivity to data feeds from third party markets and other content service providers (the ''Third Party Data Feeds'').[13] The Exchange proposes that Users could connect to the Global OTC System over the IP network or LCN: This is substantially the same as with Third Party Data Feeds, where ''[c]onnectivity . . . is over the IP network, with the exception that Users can connect to Global OTC and ICE Data Global Index over the IP network or LCN.'' [14]

The Exchange would provide access to the Global OTC System (''Access'') as a convenience to Users. Use of Access is completely voluntary, and it is the Exchange's understanding that currently third party options are available to a User to access the Global OTC System. The Exchange is not aware of any impediment to additional third parties offering such access. With respect to third parties that presently offer, or in the future opt to offer, access to the Global OTC Systems, a User may access such services through the Secure Financial Transaction Infrastructure (''SFTI'') network, a third party telecommunication network, third party wireless network, a cross connect, or a combination thereof to access such services and products through a connection to an access center outside the data center (which could be a SFTI access center, a third-party access center, or both), another User, or a third party vendor.

Establishing a User's access to the Global OTC System would not give the Exchange any right to use the Global OTC System. Connectivity to the Global OTC System would not provide access or order entry to the Exchange's execution system, and a User's connection to the Global OTC System would not be through the Exchange's execution system.

General

As is the case with all Exchange co-location arrangements, (i) neither a User nor any of the User's customers would be permitted to submit orders directly to the Exchange unless such User or customer is a member organization, a Sponsored Participant or an agent thereof (*e.g.,* a service bureau providing order entry services); (ii) use of the co-location services proposed herein would be completely voluntary and available to all Users on a non-discriminatory basis; [15] and (iii) a User would only

[4] The Exchange initially filed rule changes relating to its co-location services with the Commission in 2010. *See* Securities Exchange Act Release No. 62960 (September 21, 2010), 75 FR 59310 (September 27, 2010) (SR–NYSE–2010–56). The Exchange operates a data center in Mahwah, New Jersey (the ''data center'') from which it provides co-location services to Users.

[5] For purposes of the Exchange's co-location services, a ''User'' means any market participant that requests to receive co-location services directly from the Exchange. *See* Securities Exchange Act Release No. 76008 (September 29, 2015), 80 FR 60190 (October 5, 2015) (SR–NYSE–2015–40). As specified in the Price List, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates NYSE American LLC (''NYSE American''), NYSE Arca, Inc. (''NYSE Arca''), and NYSE National, Inc. (''NYSE National'' and together, the ''Affiliate SROs''). *See* Securities Exchange Act Release No. 70206 (August 15, 2013), 78 FR 51765 (August 21, 2013) (SR–NYSE–2013–59).

[6] *See* 17 CFR 242.300(a). An ATS is a trading system that meets the definition of ''exchange'' under federal securities laws but is not required to register as a national securities exchange if the ATS operates under an exemption provided under the Act.

[7] *See* Securities Exchange Act Release No. 80311 (March 24, 2017), 82 FR 15741 (March 30, 2017) (SR–NYSE–2016–45) (notice of filing of Partial Amendment No. 4 and order granting accelerated approval of a proposed rule change, as modified by Amendment Nos. 1 through 4, to amend the co-location services offered by the Exchange to add certain access and connectivity fees).

[8] *See* Securities Exchange Act Release No. 79674 (December 22, 2016), 81 FR 96053 (December 29, 2016) (SR–NYSE–2016–45), fn. 21 (notice of filing of Amendment No. 3 to proposed rule change amending the co-location services offered by the Exchange to add certain access and connectivity fees).

[9] *See* 82 FR 15741, *supra* note 7, at 15744.

[10] *Id.*

[11] *See* Securities Exchange Act Release No. 74222 (February 6, 2015), 80 FR 7888 (February 12, 2015) (SR–NYSE–2015–05) (notice of filing and immediate effectiveness of proposed rule change to include IP network connections).

[12] *See* Securities Exchange Act Release No. 79730 (January 4, 2017), 82 FR 3045 (January 10, 2017) (SR–NYSE–2016–92) (notice of filing and immediate effectiveness of proposed rule change amending the Exchange's Price List related to colocation services to increase LCN and IP Network fees and add a description of access to trading and execution services and connectivity to included data products).

[13] *See* 81 FR 96053, *supra* note 8, at 96055–56.

[14] Price List, at 32; *see* 81 FR 96053, *supra* note 8, at note 20.

[15] As is currently the case, Users that receive co-location services from the Exchange will not receive any means of access to the Exchange's trading and execution systems that is separate from, or superior to, that of other Users. In this regard, all orders sent

incur one charge for the particular co-location service described herein, regardless of whether the User connects only to the Exchange or to the Exchange and one or more of the Affiliate SROs.[16]

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed fee change is consistent with Section 6(b) of the Act,[17] in general, and furthers the objectives of Sections 6(b)(5) of the Act,[18] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed changes would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because, by offering access to the Global OTC System, the Exchange would give each User additional options for addressing its access needs, responding to User demand for access options. Providing additional services would help each User tailor its data center operations to the requirements of its business operations by allowing it to select the form and latency of access that best suits its needs.

The Exchange would provide Access as a convenience to Users. Use of Access is completely voluntary, and it is the Exchange's understanding that currently third party options are available to a User to access the Global OTC System. The Exchange is not aware of any impediment to additional third parties offering such access. With respect to third parties that presently offer, or in the future opt to offer, access to the Global OTC Systems, a User may access such services through the SFTI network, a third party telecommunication network, third party wireless network, a cross connect, or a combination thereof to access such services and products through a connection to an access center outside the data center (which could be a SFTI access center, a third-party access center, or both), another User, or a third party vendor.

The Exchange believes that the proposed change would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because the proposed treatment of Global OTC would be consistent with its treatment in other contexts. The Exchange also treats Global OTC as a third party with respect to connectivity to Third Party Data Feeds.[19] The Exchange proposes that Users could connect to the Global OTC System over the IP network or LCN: This is substantially the same as with Third Party Data Feeds, where connectivity is over the IP network, with the exception that Users can connect to Global OTC and one other Third Party Data Feed over the IP network or LCN.[20]

The Exchange also believes that the proposed fee change is consistent with Section 6(b)(4) of the Act,[21] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed fee change is consistent with Section 6(b)(4) of the Act for multiple reasons. The Exchange operates in a highly competitive market in which exchanges offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. Accordingly, fees charged for co-location services are constrained by the active competition for the order flow of, and other business from, such market participants. If a particular exchange charges excessive fees for co-location services, affected market participants will opt to terminate their co-location arrangements with that exchange, and adopt a possible range of alternative strategies, including placing their servers in a physically proximate location outside the exchange's data center (which could be a competing exchange), or pursuing strategies less dependent upon the lower exchange-to-participant latency associated with co-location. Accordingly, the exchange charging excessive fees would stand to lose not only co-location revenues but also the liquidity of the formerly co-located trading firms, which could have additional follow-on effects on the market share and revenue of the affected exchange.

The Exchange believes that the proposed charges would be reasonable, equitably allocated and not unfairly discriminatory because it would treat connectivity to the Global OTC System the same as connectivity to the execution system of other ATSs. Currently, the Third Party Systems include two ATSs.[22]

The Exchange believes that the additional service proposed herein would be equitably allocated and not unfairly discriminatory because, in addition to Access being completely voluntary, it would be available to all Users on an equal basis (*i.e.,* the same Access would be available to all Users). All Users that voluntarily selected to receive Access would be charged the same amount for the same service. Users that opted to use Access would not receive access that is not available to all Users, as all market participants that contracted with Global OTC would receive access.

The Exchange believes that the proposed charges would be reasonable, equitably allocated and not unfairly discriminatory because the Exchange would offer the Access as a convenience to Users, but in order to do so must provide, maintain and operate the data center facility hardware and technology infrastructure. The Exchange must handle the installation, administration, monitoring, support and maintenance of such services, including by responding to any production issues. Since the inception of co-location, the Exchange has made numerous improvements to the network hardware and technology infrastructure and has established additional administrative controls. The Exchange has expanded the network

to the Exchange enter the Exchange's trading and execution systems through the same order gateway, regardless of whether the sender is co-located in the data center or not. In addition, co-located Users do not receive any market data or data service product that is not available to all Users, although Users that receive co-location services normally would expect reduced latencies in sending orders to, and receiving market data from, the Exchange.

[16] *See* 78 FR 51765, *supra* note 5, at 51766. NYSE American, NYSE Arca and NYSE National have submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSEAmer–2019–03, SR–NYSEArca–2019–07, and SR–NYSENat–2019–03.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

[19] *Supra* note 13.

[20] *Supra* note 14.

[21] 15 U.S.C. 78f(b)(4).

[22] Credit Suisse and OTC Markets have ATSs. *See* Commission list of ATSs at *https://www.sec.gov/foia/docs/atslist.htm.*

infrastructure to keep pace with the increased number of services available to Users, including resilient and redundant feeds. In addition, in order to provide Access, the Exchange would maintain multiple connections to the Global OTC System, allowing the Exchange to provide resilient and redundant connections; adapt to any changes made by Global OTC; and cover any applicable fees charged by Global OTC, such as port fees. In addition, Users would not be required to use any of their bandwidth for Access unless they wish to do so.

The Exchange believes the fees for Access are reasonable because they allow the Exchange to defray or cover the costs associated with offering Users Access while providing Users the convenience of receiving such Access within co-location, helping them tailor their data center operations to the requirements of their business operations.

For the reasons above, the proposed changes would not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[23] the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because all of the proposed services are completely voluntary.

The Exchange believes that providing Users with additional options for access to the Global OTC Systems would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because such proposed Access would satisfy User demand for access options. The Exchange would provide Access as a convenience to Users. Use of Access is completely voluntary, and it is the Exchange's understanding that currently third party options are available to a User to access the Global OTC System. The Exchange is not aware of any impediment to additional third parties offering such access. With respect to third parties that presently offer, or in the future opt to offer, access to the Global OTC Systems, a User may access such services through the SFTI network, a third party telecommunication network, third party wireless network, a cross connect, or a combination thereof to access such services and products through a connection to an access center outside the data center (which could be a SFTI access center, a third-party access center, or both), another User, or a third party vendor.

Users that opt to use the proposed Access would not receive access that is not available to all Users, as all market participants that contract with Global OTC may receive access. In this way, the proposed changes would enhance competition by helping Users tailor their Access to the needs of their business operations by allowing them to select the form and latency of access and connectivity that best suits their needs.

The Exchange believes that the proposed change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because it would treat connectivity to the Global OTC System the same as connectivity to the execution system of other ATSs. Specifically, they would all be Third Party Systems subject to the same fees. In addition, the proposed treatment of Global OTC would be consistent with its treatment in other contexts. The Exchange also treats Global OTC as a third party with respect to connectivity to Third Party Data Feeds.[24]

Currently, connectivity to the Third Party Systems is over the IP network. The Exchange believes that allowing Users to connect to the Global OTC System over either the IP network or LCN would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Currently, the Third Party Systems include two ATS, of which the Exchange believes OTC Markets is the most comparable to Global OTC, although Global OTC is substantially the smaller of the two.[25] While an LCN connection provides lower latency than the IP network, that latency difference is relevant, as a practical matter, only for connections within the Mahwah data center, where the Global OTC System is located. When connecting to a comparable, competing ATS located in another data center, such as OTC Markets, Users within the Mahwah data center would incur geographical latency that would dwarf any differences between the IP network and LCN. Furthermore, it is the Exchange's understanding that market participants trading in non-NMS securities tend to be less latency sensitive due to the smaller pools of liquidity in the over-the-counter markets.

Allowing Users to connect to the Global OTC System would be consistent with the treatment of Third Party Data Feeds, where connectivity is over the IP network, with the exception that Users can connect to Global OTC and one other Third Party Data Feed over the IP network or LCN.[26]

The Exchange operates in a highly competitive market in which exchanges offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. Accordingly, fees charged for co-location services are constrained by the active competition for the order flow of, and other business from, such market participants. If a particular exchange charges excessive fees for co-location services, affected market participants will opt to terminate their co-location arrangements with that exchange, and adopt a possible range of alternative strategies, including placing their servers in a physically proximate location outside the exchange's data center (which could be a competing exchange), or pursuing strategies less dependent upon the lower exchange-to-participant latency associated with co-location.

Accordingly, the exchange charging excessive fees would stand to lose not only co-location revenues but also the liquidity of the formerly co-located trading firms, which could have additional follow-on effects on the market share and revenue of the affected exchange. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

[23] 15 U.S.C. 78f(b)(8).

[24] *Supra* note 13.

[25] Both Global OTC and the OTC Markets are inter-dealer quotation systems. The third is the OTC Bulletin Board, a facility of the Financial Industry Regulatory Authority. Global OTC's market share is approximately 10% of average daily volume of trades of over-the-counter equities, compared to OTC Markets' market share of approximately 90% of average daily volume of trades. *See https://www.globalotc.com/brokers/market-share.*

[26] *Supra* note 14.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [27] and Rule 19b–4(f)(6) thereunder.[28] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[29]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [30] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2019–07 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2019–07. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2019–07 and should be submitted on or before April 25, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–06515 Filed 4–3–19; 8:45 am]

BILLING CODE 8011–01–P

[27] 15 U.S.C. 78s(b)(3)(A)(iii).

[28] 17 CFR 240.19b–4(f)(6).

[29] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[30] 15 U.S.C. 78s(b)(2)(B).

[31] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85459; File Nos. SR–BOX–2018–24; SR–BOX–2018–37; and SR–BOX–2019–04]

Self-Regulatory Organizations; BOX Exchange LLC; Order Disapproving Proposed Rule Changes To Amend the Fee Schedule on the BOX Market LLC Options Facility To Establish BOX Connectivity Fees for Participants and Non-Participants Who Connect to the BOX Network

March 29, 2019.

I. Introduction

On July 19, 2018, BOX Exchange LLC (''BOX'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b-4 thereunder,[2] a proposed rule change (SR–BOX–2018–24) (''BOX 1'') to amend the BOX fee schedule to establish certain connectivity fees and reclassify its high speed vendor feed (''HSVF'') connection as a port fee. BOX 1 was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[3] BOX 1 was published for comment in the **Federal Register** on August 2, 2018.[4] The Commission initially received one comment letter on BOX 1 [5] and one response letter from the Exchange.[6] On September 17, 2018, the Division of Trading and Markets (the ''Division''), acting on behalf of the Commission by delegated authority, issued an order temporarily suspending BOX 1 pursuant to Section 19(b)(3)(C) of the Act [7] and simultaneously instituting proceedings under Section 19(b)(2)(B) of the Act [8] to determine whether to approve or disapprove BOX 1 (''Order Instituting Proceedings I'').[9] The Commission thereafter received three additional comment letters on BOX 1 [10] and one

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] *See* Securities Exchange Act Release No. 83728 (July 27, 2018), 83 FR 37853 (''Notice'').

[5] *See* Letter from Tyler Gellasch, Executive Director, The Healthy Markets Association, to Brent J. Fields, Secretary, Commission, dated August 23, 2018 (''Healthy Markets Letter I'').

[6] *See* Letter from Lisa J. Fall, President, BOX, to Brent J. Fields, Secretary, Commission, dated September 12, 2018 (''BOX Response Letter I'').

[7] 15 U.S.C. 78s(b)(3)(C).

[8] 15 U.S.C. 78s(b)(2)(B).

[9] *See* Securities Exchange Act Release No. 84168 (September 17, 2018), 83 FR 47947 (September 21, 2018).

[10] *See* Letters from Theodore R. Lazo, Managing Director and Associate General Counsel, and Ellen

Continued

additional response letter from the Exchange.[11]

On September 19, 2018, pursuant to Rule 430 of the Commission's Rules of Practice,[12] the Exchange filed a notice of intention to petition for review of Order Instituting Proceedings I.[13] Such action preserved the Exchange's right to file a petition to review the Division's action by delegated authority and, pursuant to Rule 431(e) of the Commission's Rules of Practice, triggered an automatic stay of the action by delegated authority, which reinstated the Exchange's authority to charge the connectivity fees at issue.[14] On September 26, 2018, the Exchange filed a petition for review of Order Instituting Proceedings I.[15] On November 16, 2018, the Commission granted the BOX 1 Petition and discontinued the automatic stay of the delegated action,[16] thereby suspending the Exchange's ability to charge the connectivity fees at issue while the Commission conducts proceedings to consider the proposed fees' consistency with the Act. In its order granting the BOX 1 Petition, the Commission also ordered that any party or other person could file a statement by December 10, 2018, in support or in opposition to the action made by delegated authority.[17] The Commission received two such statements from the Exchange.[18] On January 25, 2019, pursuant to Section 19(b)(2) of the Act,[19] the Commission designated a longer period within which to approve or disapprove BOX 1.[20] On February 25, 2019, the Commission issued an order affirming the staff's action by delegated authority, temporarily suspending the rule filing and instituting proceedings.[21]

On November 30, 2018, the Exchange filed with the Commission a second proposed rule change (SR–BOX–2018–37) (''BOX 2'') to amend the BOX fee schedule to establish the same fees established by BOX 1.[22] BOX 2 was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[23] On December 14, 2018, the Division, acting on behalf of the Commission by delegated authority, issued a notice of BOX 2 and order temporarily suspending BOX 2 pursuant to Section 19(b)(3)(C) of the Act[24] and simultaneously instituting proceedings under Section 19(b)(2)(B) of the Act[25] to determine whether to approve or disapprove BOX 2 (''Order Instituting Proceedings II'').[26] The Commission received two comment letters on BOX 2.[27]

On February 13, 2019, the Exchange filed with the Commission a third proposed rule change (SR–BOX–2019–04) (''BOX 3'' and, together with BOX 1 and BOX 2, the ''proposed rule changes'') to amend the BOX fee schedule to establish the same fees proposed by BOX 1 and BOX 2.[28] BOX 3 was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[29] On February 26, 2019, the Division, acting on behalf of the Commission by delegated authority, issued a notice of BOX 3 and order temporarily suspending BOX 3 pursuant to Section 19(b)(3)(C) of the Act[30] and simultaneously instituting proceedings under Section 19(b)(2)(B) of the Act[31] to determine whether to approve or disapprove BOX 3 (''Order Instituting Proceedings III'').[32] On February 26, 2019, pursuant to Rule 430 of the Commission's Rules of Practice,[33] the Exchange filed a notice of intention to petition for review of Order Instituting Proceedings III.[34] Such action preserved the Exchange's right to file a petition to review the Division's action by delegated authority and, pursuant to Rule 431(e) of the Commission's Rules of Practice, triggered an automatic stay of the action by delegated authority, which reinstated the Exchange's authority to charge the connectivity fees at issue.[35] On March 5, 2019, the Exchange filed a petition for review of Order Instituting Proceedings III.[36] On March 12, 2019, the Commission received a comment letter on BOX 3, supporting the Division's action to suspend and institute proceedings in BOX 3.[37] On March 19, 2019, the Commission received another comment letter on the proposed rule changes expressing further concerns about the proposals[38] and an additional response letter from BOX.[39] On March 22, 2019, the Commission granted the BOX 3 Petition, issued an order affirming the action by delegated authority, and lifted the stay.[40] On March 27, the Commission received an additional comment letter on the proposed rule changes arguing that the exchange has not provided necessary information

Greene, Managing Director, Financial Services Operations, Securities Industry and Financial Markets Association (''SIFMA''), to Brent J. Fields, Secretary, Commission, dated October 15, 2018 (''SIFMA Letter I''); Tyler Gellasch, Executive Director, The Healthy Markets Association, to Brent J. Fields, Secretary, Commission, dated January 2, 2019 (''Healthy Markets Letter II''); and Chester Spatt, Pamela R. and Kenneth B. Dunn Professor of Finance, Tepper School of Business, Carnegie Mellon University, to Brent J. Fields, Secretary, Commission, dated January 2, 2019 (''Spatt Letter'').

[11] *See* Letter from Lisa J. Fall, President, BOX, to Brent J. Fields, Secretary, Commission, dated February 19, 2019 (''BOX Response Letter II'').

[12] 17 CFR 201.430.

[13] *See* Letter from Amir C. Tayrani, Partner, Gibson, Dunn & Crutcher LLP, to Brent J. Fields, Secretary, Commission, dated September 19, 2018. Pursuant to Rule 431(e) of the Commission's Rules of Practice, a notice of intention to petition for review results in an automatic stay of the action by delegated authority. 17 CFR 201.431(e).

[14] 17 CFR 201.431(e).

[15] *See* Petition for Review of Order Temporarily Suspending BOX Exchange LLC's Proposal to Amend the Fee Schedule on BOX Market LLC, dated September 26, 2018 (''BOX 1 Petition'').

[16] *See* Securities Exchange Act Release No. 84614 (November 16, 2018), 83 FR 59432 (November 23, 2018).

[17] *See id.*

[18] *See* Letter from Lisa J. Fall, President, BOX, to Brent J. Fields, Secretary, Commission, to Brent J. Fields, Secretary, Commission, dated December 7, 2018 (''BOX Statement''); and Letter from Amir C. Tayrani, Gibson, Dunn & Crutcher LLP, to Brent J. Fields, Secretary, Commission, dated December 10, 2018 (''Gibson Dunn Statement'') (submitted on behalf of the Exchange by its counsel).

[19] 15 U.S.C. 78s(b)(2).

[20] *See* Securities Exchange Act Release No. 84989, 84 FR 858 (January 31, 2019). The Commission designated March 29, 2019, as the date by which the Commission would approve or disapprove BOX 1.

[21] *See* Securities Exchange Act Release No. 85184, 84 FR 6842 (February 28, 2019).

[22] The Commission notes that the proposed fees in BOX 2 are identical to those proposed in BOX 1 and the Form 19b–4 for the two filings are substantively identical, except BOX 2 also identifies the categories of the Exchange's costs to offer connectivity services and states that the proposed fees would ''offset'' the Exchange's costs.

[23] 15 U.S.C. 78s(b)(3)(A).

[24] 15 U.S.C. 78s(b)(3)(C).

[25] 15 U.S.C. 78s(b)(2)(B).

[26] *See* Securities Exchange Act Release No. 84823 (December 14, 2018), 83 FR 65381 (December 20, 2018) (''BOX 2 Notice and OIP'').

[27] *See* Healthy Markets Letter II, *supra* note 10; Spatt Letter, *supra* note 10. The Commission notes that these two letters were also submitted on BOX 1.

[28] The Commission notes that the proposed fees in BOX 3 are identical to those proposed in BOX 2 and the Form 19b–4 for the two filings are substantively identical.

[29] 15 U.S.C. 78s(b)(3)(A).

[30] 15 U.S.C. 78s(b)(3)(C).

[31] 15 U.S.C. 78s(b)(2)(B).

[32] *See* Securities Exchange Act Release No. 85201, 84 FR 7146 (March 1, 2019).

[33] 17 CFR 201.430.

[34] *See* Letter from Amir C. Tayrani, Partner, Gibson, Dunn & Crutcher LLP, to Brent J. Fields, Secretary, Commission, dated February 26, 2019. Pursuant to Rule 431(e) of the Commission's Rules of Practice, a notice of intention to petition for review results in an automatic stay of the action by delegated authority. 17 CFR 201.431(e).

[35] 17 CFR 201.431(e).

[36] *See* Petition for Review of Order Temporarily Suspending BOX Exchange LLC's Proposal to Amend the Fee Schedule on BOX Market LLC, dated March 5, 2019 (''BOX 3 Petition'').

[37] *See* Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, to Vanessa Countryman, Acting Secretary, Commission, dated March 12, 2019 (''SIFMA Letter II'').

[38] *See* Letter from Tyler Gellasch, Executive Director, The Healthy Markets Association, to Brent J. Fields, Secretary, Commission, dated March 19, 2019 (''Healthy Markets Letter III'').

[39] *See* Letter from Lisa J. Fall, President, BOX, to Brent J. Fields, Secretary, Commission, dated March 25, 2019 (''BOX Response Letter III'').

[40] *See* Securities Exchange Act Release No. 85399, 84 FR11850 (March 28, 2019).

showing how the proposed connectivity fees comply with the Act and challenging factual statements made in BOX's third response letter.[41] The Commission received an additional comment letter on March 28, 2019 opposing BOX 3.[42]

The proposed rule changes are therefore before the Commission pursuant to Order Instituting Proceedings I, Order Instituting Proceedings II and Order Instituting Proceedings III.

This order disapproves the proposed rule changes.

II. Description of the Proposed Rule Changes

The Exchange proposes to amend its fee schedule to establish connectivity fees for Participants[43] and non-Participants who connect to the BOX network. Specifically, the Exchange proposes to charge Participants and non-Participants with 10 Gigabit connections a monthly fee of $5,000 per connection, and Participants and non-Participants with non-10 Gigabit connections a monthly fee of $1,000 per connection. The Exchange would charge the applicable connectivity fee for each calendar month to any Participant or non-Participant connected as of the last trading day of that month.

The Exchange also proposes to amend its fee schedule to reclassify the HSVF connection as a port fee and to state that subscribers must be credentialed by the Exchange to receive the HSVF. According to the Exchange, the HSVF subscription is not dependent on a physical connection to the Exchange, and thus is a port and not a physical connectivity option.[44] The amount of the HSVF fee would remain unchanged, and the Exchange would continue to assess an HSVF port fee of $1,500 per month for each month a Participant or non-Participant is credentialed to use the HSVF port.

III. Discussion and Commission Findings

Under Section 19(b)(2)(C) of the Act,[45] the Commission shall approve a proposed rule change of a self-regulatory organization (''SRO'') if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to such organization.[46] The Commission shall disapprove a proposed rule change if it does not make such a finding.[47] Rule 700(b)(3) of the Commission's Rules of Practice states that the ''burden to demonstrate that a proposed rule change is consistent with the [Act] and the rules and regulations issued thereunder . . . is on the self-regulatory organization that proposed the rule change'' and that a ''mere assertion that the proposed rule change is consistent with those requirements . . . is not sufficient.''[48] Rule 700(b)(3) also states that ''the description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding.''[49] Both the D.C. Circuit and the Commission have recently addressed the application of these and analogous standards, and the decision to disapprove the proposed rule changes is best understood in the context of that precedent.

A. The Relevant Precedent

1. The NetCoalition Litigation

In 2010, the D.C. Circuit vacated the Commission's approval of a fee rule filed by NYSE Arca, Inc. (''NYSE Arca'')[50] The court held that focusing on whether competitive market forces constrained the exchange's pricing decisions was an acceptable basis for assessing the fairness and reasonableness of the fees, but determined that the record did not factually support the conclusion that significant competitive forces limited NYSE Arca's ability to set unfair or unreasonable prices. The D.C. Circuit vacated and remanded for further proceedings.

Subsequently, NYSE Arca filed with the Commission a new rule that imposed the same fees that had been vacated by the D.C. Circuit, but that designated the filing as effective immediately pursuant to a change in the law made by the Dodd-Frank Act.[51] The Commission did not suspend that filing, as Dodd-Frank permitted, and another appeal to the D.C. Circuit ensued. In that appeal, the court held that it lacked jurisdiction to consider challenges to the Commission's non-suspension of the fees under Section 19(b) of the Act.[52] But the court, in so holding, ''[took] the Commission at its word'' that the Commission would ''make the [Exchange Act] section 19(d) process available to parties'' seeking to challenge fees as improper limitations or prohibitions of access to exchange services, and recognized that this Commission process would ''open [ ] the gate to [judicial] review.''[53]

Following that decision, SIFMA filed a challenge with the Commission to NYSE Arca's 2010 fee rule under Section 19(d) of the Act on the ground that the fee rule was an improper limitation of access to exchange services. The Commission consolidated that challenge with another challenge to a fee rule filed by The Nasdaq Stock Market LLC.[54]

On October 16, 2018, the Commission issued its decision in the consolidated proceeding.[55] The Commission held that in that case the exchanges had failed to meet their burden of establishing that certain challenged fees were consistent with the purposes of the Act. Specifically, the Commission concluded that the exchanges had not established that competitive forces constrained their pricing decisions with respect to the fees at issue and that the fees were fair and reasonable and not unreasonably discriminatory. In so finding, the Commission stated specifically that it was not making a determination that the fees themselves were not fair and reasonable. Rather, the Commission explained that it was possible the challenged fees could be shown to be fair and reasonable and otherwise consistent with the Act, but that the evidence provided by the exchanges failed to satisfy their burden on the existing record. The opinion reviewed each of the exchanges'

[41] *See* Letter from Stefano Durdic, R2G, to Vanessa Countryman, Acting Secretary, Commission, dated March 27, 2019 (''R2G Letter'').

[42] *See* Letter from Anand Prakash, Managing Partner & Director of Software Development, Cutler Group, LP, to Vanessa Countryman, Acting Secretary, Commission, dated March 28, 2019 (''Prakash Letter'').

[43] A participant is defined under BOX Rule 100(a)(41) as a firm or organization that is registered with the Exchange pursuant to the BOX Rule 2000 Series for purposes of participating in trading on a facility of the Exchange (''Participant'').

[44] *See* Notice, *supra* note 4, at 37853.

[45] 15 U.S.C. 78s(b)(2)(C).

[46] 15 U.S.C. 78s(b)(2)(C)(i).

[47] 15 U.S.C. 78s(b)(2)(C)(ii); *see also* 17 CFR 201.700(b)(3).

[48] 17 CFR 201.700(b)(3).

[49] *Id.*

[50] *NetCoalition* v. *SEC,* 615 F.3d 525, 534–35, 539–44 (DC Cir. 2010) (''NetCoalition I'').

[51] Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Public Law 111–203, 124 Stat. 1376 (July 21, 2010); *see also* 15 U.S.C. 78s(b)(3)(A) (permitting SROs to designate as immediately effective rule changes ''establishing or changing a due, fee, or other charge imposed by the [SRO] on any person, whether or not the person is a member of the [SRO]'').

[52] *NetCoalition* v. *SEC,* 715 F.3d 342 (D.C. Cir. 2013) (''NetCoalition II'').

[53] *NetCoalition II,* 715 F.3d at 353.

[54] *See* In the Matter of the Application of SIFMA, Securities Exchange Act Release No. 72182, 21 (May 16, 2014), *available at https://www.sec.gov/litigation/opinions/2014/34-72182.pdf.*

[55] *See* In the Matter of the Application of SIFMA, Securities Exchange Act Release No. 84432 (October 16, 2018), *available at https://www.sec.gov/litigation/opinions/2018/34-84432.pdf* (''SIFMA Decision'').

arguments and explained why it was insufficient to justify approving the fees. Accordingly, the Commission set those fees aside.[56] During the pendency of this Section 19(d) challenge, over 60 related challenges to exchange rule changes and NMS plan amendments were filed with the Commission. Contemporaneously with the Commission's October 16, 2018 decision, the Commission issued a separate order (''Remand Order'') remanding those related challenges to the respective exchanges and NMS plan participants and instructed the exchanges and plan participants to consider the impact of the October 16, 2018 decision on the challengers' assertions that the contested rule changes and plan amendments should be set aside under Section 19(d) of the Act.[57] The Commission further directed the exchanges and NMS plan participants to develop or identify fair procedures for assessing the challenged rule changes and NMS plan amendments as potential denials or limitations of access to services.[58]

2. Susquehanna

In August 2017, the D.C. Circuit issued its decision in *Susquehanna International Group* v. *SEC.*[59] There, the court held that the Commission's order approving a proposed rule change filed by the Options Clearing Corporation (''OCC'')—its ''Capital Plan''—did not provide the reasoned analysis required under the Act and the Administrative Procedure Act, instead relying too heavily, the court said, on OCC's findings and determinations.[60] The court emphasized that the Commission's ''unquestioning reliance on OCC's defense of its own actions is not enough to justify approving the Plan''; rather, the Commission ''should have critically reviewed OCC's analysis or performed its own.''[61] Nor, according to the court, could the Commission reach a conclusion ''unsupported by substantial evidence.''[62] The D.C. Circuit remanded the case to the Commission for further proceedings.

Following the remand, the Commission disapproved the OCC Capital Plan because it determined that the information OCC submitted before the Commission was insufficient to support a finding that the plan was consistent with the Act.[63] In reaching this determination, the Commission reiterated the D.C. Circuit's holding that it must ''critically evaluate the representations made and the conclusions drawn'' by the SRO in determining whether a proposed rule change is consistent with the Act.[64]

3. NMS Plan Orders and Fee Filings

On May 1, 2018, the Commission issued orders summarily abrogating immediately effective plan amendments that the Consolidated Tape Association (''CTA'')/Consolidated Quotation (''CQ'') Plan and Nasdaq Unlisted Trading Privileges (''UTP'') Plan filed regarding certain fees.[65] Each order explained that ''[t]he Commission is concerned that the information and justifications provided . . . are not sufficient for the Commission to determine whether the Amendment is consistent with the Act''—specifically, the amendments raised questions ''as to whether the changes will result in fees that are fair and reasonable, not unreasonably discriminatory, and that will not impose an undue or inappropriate burden on competition under Section 11A of the Act.''[66] The Commission determined that the procedures in Rule 608(b)(2) of Regulation NMS, which are similar to those for SROs under Section 19(b)(2)(B) of the Act, would provide a better mechanism to make those determinations.[67]

In addition, on July 31, 2018, the Commission issued an order staying the effectiveness of CTA/CQ plan amendments regarding certain fees after Bloomberg filed an application for review and requested a stay.[68] The order stated that the fairness and reasonableness of an amendment ''must be explained and supported in such a manner that the Commission has sufficient information before it to satisfy its statutorily mandated review function.''[69] But CTA's filing did ''not identify any basis by which CTA's fee changes could be assessed for fairness and reasonableness.''[70] The Commission found that CTA's ''unsupported declaration'' that it ''believe[d] that the proposed amendment[s are] fair and reasonable and provide[] for an equitable allocation of . . . fees'' was not adequate.[71] Following the stay order, the plan participants rescinded the amendments.[72]

After *Susquehanna,* and about the same time the Commission instituted proceedings on BOX 1, the Commission also instituted proceedings on proposed rule changes submitted by the Miami International Securities Exchange LLC (''MIAX'') and MIAX PEARL LLC (''PEARL'') to increase their respective connectivity fees.[73] In instituting proceedings on the MIAX and PEARL connectivity filings, the Commission noted that exchange statements in support of their proposals should be sufficiently detailed and specific to support a finding that the proposed

[56] *Id.* at 17–54.

[57] *See* In the Matter of the Applications of SIFMA and Bloomberg L.P., Securities Exchange Act Release No. 84433 (October 16, 2018), *available at https://www.sec.gov/litigation/opinions/2018/34-84433.pdf* (''Remand Order'').

[58] *Id.*

[59] 866 F.3d 442 (D.C. Cir. 2017).

[60] *Id.* at 447 (citing NetCoalition I).

[61] *Id.*

[62] *Id.* at 447–48.

[63] *See* Securities Exchange Act Release No. 85121 (February 13, 2019), 84 FR 5157 (February 20, 2019) (SR–OCC–2015–02).

[64] *See* Securities Exchange Act Release No. 85121 (February 13, 2019), 84 FR 5157 (February 20, 2019) (SR–OCC–2015–02).

[65] *See* Securities Exchange Act Release No. 83148 (May 1, 2018), 83 FR 20126 (May 7, 2018) (SR–CTA/CQ–2018–01) (''CTA/CQ Order'') (Order of Summary Abrogation of the Twenty-Third Charges Amendment to the Second Restatement of the CTA Plan and the Fourteenth Charges Amendment to the Restated CQ Plan); Securities Exchange Act Release No. 83149 (May 1, 2018), 83 FR 20129 (May 7, 2018), (S7–24–89) (''UTP Order'')(Order of Summary Abrogation of the Forty-Second Amendment to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis).

[66] *See* CTA/CQ Order, *supra* note 65, at 20128; UTP Order, *supra* note 65, at 20130.

[67] *See* 17 CFR 242.608(b)(2); 15 U.S.C. 78s(b)(2)(B).

[68] *See* In the Matter of Bloomberg L.P., Securities Exchange Act Release No. 83755 (July 31, 2018), *available at https://www.sec.gov/litigation/opinions/2018/34-83755.pdf.*

[69] *Id.* at 14–15.

[70] *Id.* at 15.

[71] *Id.* at 14.

[72] *See* Securities Exchange Act Release No. 84194 (September 18, 2018), 83 FR 48356 (September 24, 2018) (SR–CTA/CQ–2018–03).

[73] *See* Securities Exchange Act Release Nos. 84175 (September, 17, 2018), 83 FR 47955 (September 21, 2018) (SR–MIAX–2018–19); and 84177 (September 17, 2018), 83 FR 47953 (September 21, 2018) (SR–PEARL–2018–16) (orders suspending and instituting proceedings to determine whether to approve or disapprove connectivity fees, which were filed by MIAX and PEARL on July 31, 2018). Both filings were withdrawn on October 5, 2018. MIAX and PEARL submitted the proposed connectivity fees again on September 18, 2018. In those filings, MIAX and PEARL stated that the fee increase would partially offset costs associated with maintaining and expanding a team of highly-skilled network engineers, increasing fees charged by the Exchange's third-party data center operator, and costs associated with projects and initiatives designed to improve overall network performance and stability. The Division, acting on behalf of the Commission by delegated authority issued orders temporarily suspending the new connectivity fee filings and simultaneously instituting proceedings to determine whether to approve or disapprove the new connectivity fee filings. *See* Securities Exchange Act Release Nos. 84357 (October 3, 2018), 83 FR 50976 (October 10, 2018) (SR–MIAX–2018–25); and 84358 (October 3, 2018) 83 FR 51022 (October 10, 2018) (SR–PEARL–2018–19). MIAX and PEARL withdrew their respective filings on November 23, 2018.

rules are consistent with the Act.[74] The Commission also stated that it intended to further consider whether increasing certain connectivity fees to the exchange is consistent with the statutory requirements applicable to a national securities exchange under the Act.[75]

B. The Proposed Rule Changes at Issue Here

The Commission has historically applied a ''market-based'' test in its assessment of market data fees, which we believe present similar issues as the connectivity fees proposed herein. Under that test, the Commission considers ''whether the exchange was subject to significant competitive forces in setting the terms of its proposal for [market data], including the level of any fees.'' [76] If an exchange meets this burden, the Commission will find that its fee rule is consistent with the Act unless ''there is a substantial countervailing basis to find that the terms'' of the rule violate the Act or the rules thereunder.[77] If an exchange cannot demonstrate that it was subject to significant competitive forces, it must ''provide a substantial basis, other than competitive forces, . . . demonstrating that the terms of the [fee] proposal are equitable, fair, reasonable, and not unreasonably discriminatory.'' [78] The Exchange's initial proposal, comment responses, and statements on review focused on an alternative basis other than competitive forces, namely, a cost-based justification, for its proposed connectivity fees. In its latest comment letter, the Exchange also presents a market-based argument. Therefore, the Commission's discussion below begins with the Exchange's cost-based argument [79] before moving on to consider its market-based argument.[80]

After careful consideration, the Commission is disapproving the proposed rule changes because the information before us is insufficient to support a finding that the proposed rule changes are consistent with the requirements of the Act under either argument. Specifically, the Commission is unable to find that the proposed rule changes are consistent with: (1) Section 6(b)(4) of the Act,[81] which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities; (2) Section 6(b)(5) of the Act,[82] which requires that the rules of a national securities exchange be designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers; and (3) Section 6(b)(8) of the Act,[83] which requires that the rules of a national securities exchange do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Because an inability to make any of these determinations under the Act independently necessitates disapproving the proposals, the Commission disapproves the proposed rule changes.[84]

1. The Exchange's Cost-Based Argument in Support of the Proposed Rule Changes Lacks Sufficient Information for the Commission to Determine Whether the Proposed Rule Changes are Consistent With the Act

Prior to its second response letter, the Exchange primarily raised a cost-based argument in support of the proposed rule changes. Specifically, the Exchange states that the fees will ''allow the Exchange to recover costs associated with offering access through the network connections,'' that the fees would ''offset the costs BOX incurs in maintaining, and implementing ongoing improvements to the trading systems, including connectivity costs, costs incurred on software and hardware enhancements and resources dedicated to software development, quality assurance, and technology support.'' [85] The Exchange also attempts to support its cost-based argument by asserting that the proposed fees are ''reasonable in that they are competitive with those charged by another exchange.'' [86]

Three commenters argue that the Exchange does not provide sufficient information in its filing to support a finding that the proposal is consistent with the Act.[87] Specifically, two commenters object to the Exchange's reliance on the fees of other exchanges to demonstrate that its fee increases are consistent with the Act. [88] One of these commenters argues that simply comparing the proposed fees to those charged by other exchanges and stating that they are designed to recover costs to the Exchange is insufficient to demonstrate that the fees are reasonable, equitable, and not unfairly discriminatory.[89] This commenter states that the Exchange does not assess any differences among exchanges in the use and value of their connectivity, or provide any information about the magnitude or allocation of the applicable costs on the Exchange.[90] The other commenter argues that ''similarity'' between fees does not mean they are reasonable.[91] Specifically, this commenter argues that connectivity charges outside of the exchange context are significantly lower and that the Exchange does not explain the reasons for the Exchange's upcharge.[92] Further, one commenter stated its belief that the actual impact of the proposed fees would be ''extremely inequitable'' and the Exchange made ''no attempt . . . to explore how the burdens of the fees will

[74] *See* Securities Exchange Act Release Nos. 84175 (September, 17, 2018), 83 FR 47955 (September 21, 2018) (SR–MIAX–2018–19); and 84177 (September 17, 2018), 83 FR 47953 (September 21, 2018) (SR–PEARL–2018–16).

[75] *See* Securities Exchange Act Release Nos. 84175 (September, 17, 2018), 83 FR 47955 (September 21, 2018) (SR–MIAX–2018–19); and 84177 (September 17, 2018), 83 FR 47953 (September 21, 2018) (SR–PEARL–2018–16).

[76] Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74781 (December 9, 2008) (''2008 ArcaBook Approval Order'').

[77] *Id. See also* SIFMA Decision, *supra* note 55, at 22.

[78] 2008 ArcaBook Approval Order, *supra* note 76, at 74781. *See also* SIFMA Decision, *supra* note 55, at 22.

[79] *See infra* Section III.B.1.

[80] *See infra* Section III.B.2.

[81] 15 U.S.C. 78f(b)(4).

[82] 15 U.S.C. 78f(b)(5).

[83] 15 U.S.C. 78f(b)(8).

[84] In disapproving the proposed rule changes, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation, *see* 15 U.S.C. 78c(f), and the Exchange's assertion that its proposal would enhance competition because the fees would enable the Exchange to pay for improvements to its network and offer participants higher quality software, hardware, quality assurance, and technology support. *See* BOX 1 Petition, *supra* note 15, at 12–13 and BOX Statement, *supra* note 18, at 3. The Exchange did not provide any specific information to directly support its assertion that the proposal would enhance competition other than the general statement that the proposed fees would allow for the Exchange to pay for such improvements. But even if the proposals have the potential to enhance competition, for the reasons discussed throughout, the Commission must disapprove the proposed rule changes in light of its inability, on the current record, to find that they are consistent with the Act.

[85] *See* Notice, *supra* note 4, at 37854.

[86] *See id.*

[87] *See* Healthy Markets Letter I, *supra* note 5, at 4–5; SIFMA Letter I, *supra* note 10, at 2; Spatt Letter, *supra* note 10, at 1 and 3.

[88] *See* Healthy Markets Letter I, *supra* note 5, at 5–7 (stating that the fees appear to be ''completely arbitrary'' and noting that ''[e]ven if the fees were somehow viewed as 'similar' to those charged by other [ ] exchanges, that does not mean that they are reasonable.''); Spatt Letter, *supra* note 10, at 1.

[89] *See* Spatt Letter, *supra* note 10, at 1.

[90] *See id.*

[91] *See* Healthy Markets Letter I, *supra* note 5, at 7.

[92] *See id.*

be applied across its customer base.'' [93] In this regard, a commenter states that the proposed connectivity pricing is not associated with the relative usage of various market participants and may impose a large fixed barrier to entry to smaller participants.[94]

In its first response letter, the Exchange rejects the suggestion that the Exchange should be required to provide additional information to support its belief that the proposed rule change is consistent with the Act. In addition, the Exchange argues that additional review, as requested by one commenter,[95] is unnecessary because the Exchange submitted its proposal as an immediately effective rule change under the Act.[96] Further, in response to the comments that questioned whether the Exchange provided sufficient information to demonstrate that its proposed fees are consistent with the Act, the Exchange reiterated without elaboration the arguments from its original filing comparing the proposal to fees of certain other options exchanges, provided general statements regarding the categories of costs that comprise its total market connectivity expense, and, in its second letter, claimed that platform theory constrains its ability to price its connectivity services.[97] The Exchange, however, did not respond to the comments that argued the connectivity fees are inequitable in that they fail to account for the relative usage of different market participants and the disparate barrier to entry that certain connectivity fees may impose on market participants of different sizes.

The Commission also received one comment letter in response to the Gibson Dunn Statement.[98] This commenter argued that the Commission is obligated to ensure all exchange proposed rule changes, including the fees subject to this proposal, are consistent with the Act.[99] The commenter further argued that the Exchange has provided no additional information necessary to support its conclusions and evaluate its proposal's consistency with the Act, such as the number or types of firms impacted by the fee changes or the quantitative and qualitative impacts of the fee changes on market participants and the Exchange.[100]

As noted above, Section 6 of the Act requires that the rules of a national securities exchange provide for, among other things, ''the equitable allocation of reasonable dues, fees and other charges'' and be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[101] These requirements, which apply to the rules of an exchange, apply regardless of whether a proposed rule change is filed pursuant to Section 19(b)(2) or 19(b)(3)(A) of the Act. And, because the proposed fees are now before the Commission pursuant to the Orders Instituting Proceedings I–III, the Commission can approve them only if it finds that they are consistent with these requirements. The Commission is unable to make such a finding based on the record before us.

As noted above, the Exchange makes a cost-based argument for why the proposed fees are reasonable. Specifically, the Exchange identifies the categories of costs it incurs and states that the proposed fees would ''offset'' the Exchange's costs, without providing any information as to the level of those costs or any other supporting factual basis for its conclusion. This is insufficient. In making any finding or determination, the Commission cannot ''[s]imply accept what [the SRO] has done,'' and cannot have an ''unquestioning reliance'' on an SRO's representations in a proposed rule change.[102] And, while stating the categories of costs and that the fees will offset those costs could support the application of *a* fee, without more it does little to inform the analysis into the level of the particular fees at issue here ($5,000 per month for 10 Gb connections and $1,000 per month for non-10 Gb connections) and whether they are reasonable and equitable.

In addition, in enumerating the categories of costs, the Exchange includes the cost of maintaining and implementing ongoing improvements to the trading systems, including connectivity costs, costs incurred on software and hardware enhancements, and resources dedicated to software development, quality assurance, and technology support. The Exchange, however, does not explain why it is appropriate to consider such cost items when evaluating whether the connectivity fees are consistent with the Act. The Exchange does not address how its costs to maintain and implement ongoing improvements to the trading systems relate to connectivity and whether, for example, transaction fees or other fees offset those improvements to the trading systems. Similarly, the Exchange does not offer any explanation for why the fee for 10 Gb connections is five times the fee for non-10 GB connections or why the disparity is reasonable and equitable. In addition, as stated by one commenter, the filing does not support the reasonableness of the fees by, for example, discussing ''the relative benefits to users of the various potential exchange connectivity offerings, such as subscribing to the 10 gigabit connection, the Non-10 gigabit connection, or connecting through a third party.'' [103] Nor does the Exchange offer any information that would support a claim that its connectivity services are becoming more costly to produce.[104]

Further, the Exchange does not provide any support for its assertion that the proposed fees will offset the Exchange's costs. For example, the Exchange did not provide any information as to whether the monthly costs associated with connectivity always exceed the projected monthly revenues from connectivity or provide any detail as to the frequency of the costs (*e.g.,* whether the costs are all marginal costs, fixed costs, or one-time implementation costs). Further, the Exchange did not provide information about whether any of the costs could be characterized as fixed costs that do not vary if there are more connections. As stated by commenters,[105] the Exchange has not provided information sufficient to address the questions raised above and to support a basis for a Commission finding that the proposed fees are consistent with the Act.

[93] *See id.* at 9–10 (noting that BOX did not ''provide information about how many subscribers currently purchase either level of connectivity . . . does not provide details of how much revenues will be generated from the changes . . . [n]or . . . offer any specific details for how those revenues would be spent (and to whose benefit.'').

[94] *See* Spatt Letter, *supra* note 10, at 2.

[95] *See* Healthy Markets Letter I, *supra* note 5.

[96] *See* BOX Response Letter I, *supra* note 6, at 1.

[97] *See* BOX Statement, *supra* note 18, at 2–3; Gibson Dunn Statement, *supra* note 18, at 3–4; BOX 2 Notice and OIP, *supra* note 26, at 65382; BOX Response Letter II, *supra* note 11, at 1–2.

[98] *See* Healthy Markets Letter II, *supra* note 10.

[99] *See id.* at 3–5.

[100] *See id.* at 5–6.

[101] 15 U.S.C. 78f(b)(4) and (5).

[102] *See Susquehanna,* 866 F.3d at 446–47.

[103] *See* Healthy Markets Letter I, *supra* note 5, at 6–7.

[104] *See id.* at 5.

[105] *See id.* at 5–6, 10; Healthy Markets Letter II, *supra* note 10, at 5–6; Spatt Letter, *supra* note 10, at 1.

2. The Exchange's Competition-Based Argument in Support of the Proposed Rule Changes Lacks Sufficient Information for the Commission to Determine Whether the Proposed Rule Changes are Consistent With the Act

The Exchange argues that the proposed fees are consistent with the Act because they are ''competitive with those charged by another exchange'' [106] and that they are ''comparable to and generally lower than the fees charged by other options exchanges for the same or similar services.'' [107] But Rule of Practice 700(b)(3) provides that a ''mere assertion . . . that another self-regulatory organization has a similar rule in place'' is ''not sufficient'' to ''explain why the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a self-regulatory organization.'' [108] As stated by the commenters,[109] the Exchange does not explain why a comparison of its proposed fees to those of another exchange is relevant for purposes of determining whether the Exchange's fees are consistent with the Act. The Exchange also does not discuss whether it faces similar costs as the other exchange.

Further, in its second response letter, the Exchange claims that its connectivity services are just one set of services that are related to its trading function and ''produced on a platform that is characterized by joint and common costs,'' and therefore its ability to price its joint services, including connectivity services, is constrained by robust order flow competition.[110] Under the total platform theory, some products, such as market data and trade executions, are '''joint products' with 'joint costs' at each trading 'platform,' or exchange.'' [111] If the theory applies, ''[a]lthough an exchange may price its trade execution fees higher and its market data fees lower (or vice versa), because of 'platform' competition the exchange nonetheless receives the same return from the two 'joint products' in the aggregate.'' [112]

In support of its platform theory argument, the Exchange attached to its letter a statement (''Statement'') prepared for Nasdaq Inc. on the extent to which competitive forces constrain the prices of connectivity services offered by Nasdaq Inc. for its equities market.[113] This Statement argues that connectivity pricing in the equities market must be considered in tandem with its pricing for trading and other ''joint'' services.[114] Therefore, the Exchange concludes that the competition it faces for order flow ensures that its proposed connectivity fees are reasonable, equitable, and not unfairly discriminatory and do not impose an unnecessary or inappropriate burden on competition.[115] The Exchange also concludes that it is unnecessary to provide detailed cost information in order to justify its proposed fees.[116]

The total platform theory, however, does not necessarily apply to every example of a platform offering joint products with joint costs. The Commission previously has stated that an assertion based on ''total platform theory'' *i.e.,* that an SRO's aggregate return across multiple product lines, such as transactions, market data, connectivity, and access, is constrained by competition at the platform level is insufficient unless the SRO demonstrates that the theory applies in fact to the fee at issue.[117] An SRO that wishes to rely on total platform theory to support a proposed fee change must provide data and analysis demonstrating that these competitive forces are sufficient to constrain the SRO's pricing. In this context, the Commission would need to consider whether the platform theory satisfies the exchange's burden of establishing that the fee meets the Act's requirements, among others, of being equitably allocated, not unreasonably discriminatory, and not an undue burden on competition for market participants with varying levels of trading on the SRO. Here, the Exchange did not discuss the direction and strength of the competitive forces that operate between and among various products provided by the platform in the context of the options market, and in application to the Exchange itself.[118] In doing so, the Exchange could have provided some quantitative or qualitative support for its assertions. The Exchange, however, has not established that its theory of competition reflects market realities and satisfies the market-based test with respect to the connectivity fees.[119]

Three commenters question the competiveness of the market for connectivity services.[120] Specifically, one commenter argues that the Exchange has market power with respect to its direct connectivity, unlike the competitive market for trading, and that the Exchange does not provide sufficient information to assess the competitiveness of the market for connectivity.[121] The other commenter argues that the exchanges' market data fees are not constrained by significant competitive forces and therefore the fairness and reasonableness of market data fee increases should be justified with information regarding the cost of producing the market data.[122] In a subsequent letter, the commenter asserts that connectivity fees cannot be based on the ''market value'' of the connection because broker-dealers are effectively required to connect to each market for fear of violating order protection requirements or sacrificing execution quality.[123] As a result, this commenter argues that ''there is little opportunity for market forces to determine overall levels of fees'' and thus the exchange should be required to provide cost information to establish why its connectivity fees are reasonable.[124]

The Commission recognizes the possibility that the connectivity fees at issue *may* satisfy the Commission's market-based test (for example, because the theory of platform competition is in fact applicable to the Exchange). But the Exchange has not provided information to establish that competition constrains the Exchange's pricing decisions. For example, the Exchange does not provide information regarding the extent to which the establishment of connectivity fees on the Exchange impacted order flow on the Exchange. Nor does the Exchange provide information regarding the extent to which BOX Participants

[106] *See* Notice, *supra* note 4, at 37854.

[107] *See id.*

[108] 17 CFR 201.700(b)(3).

[109] *See* Healthy Markets Letter I, *supra* note 5, at 5–7; Spatt Letter, *supra* note 10, at 1.

[110] *See* BOX Response Letter II, *supra* note 11, at 2.

[111] SIFMA Decision, *supra* note 55, at 25 (quoting *NetCoalition* v. *SEC,* 615 F.3d 525, 542 n.16 (DC Cir. 2010)).

[112] *Id.*

[113] *See* BOX Response Letter II, *supra* note 11.

[114] *See id.* at 1–2.

[115] *See id.*

[116] *See id.* at 3–4.

[117] SIFMA Decision, *supra* note 55, at 28, 29, 36 (finding that the exchange presenting the platform theory argument did not substantiate its assertions with evidence sufficient to support its platform-based arguments).

[118] The Statement is not sufficient to support BOX's position because, among other things, it is not specific to BOX and analyzes the equities markets, not the options markets.

[119] *See supra* notes 111 and 112, and accompanying text.

[120] *See* Healthy Markets Letter I, *supra* note 5, at 11; Spatt Letter, *supra* note 10, at 2; SIFMA Letter I, *supra* note 10, at 2.

[121] *See* Spatt Letter, *supra* note 10, at 2.

[122] *See* SIFMA Letter I, *supra* note 10, at 2. The commenter argues that the Exchange's proposed connectivity fees present a comparable situation to the market data fees it describes. *See id.* The commenter also stated that the Commission should establish a framework—based on direct costs—for determining whether fees for exchange products and services are reasonable when those products and services are not constrained by significant competitive forces. *See id.*

[123] *See* SIFMA Letter II, *supra* note 37, at 1–2.

[124] *Id.*

are continuing to purchase connectivity services from the Exchange.[125] The Exchange also does not discuss whether there are alternatives to the Exchange-provided connectivity services and, if so, how many BOX Participants pursue those alternatives. Finally, the Exchange does not provide any data or analysis concerning the Exchange's sources and amounts of revenue, costs, and gross margin that would bear on the issue of whether the Exchange's aggregate return on joint products is constrained by competition at the platform level and that the total platform theory applies to the Exchange.

Before the Commission may approve a fee for access or market data based on a competitive pricing model, as noted above, there must be evidence that competition will constrain its pricing.[126] The same analysis applies here to the market connectivity fees at issue. The Commission recently found that two exchanges' statistical analyses were insufficient to support a finding that competition for order flow constrains their market data prices.[127] In the same opinion, the Commission addressed a similar platform-based theory as the one the Exchange presents in its second response letter and found that the exchange presenting the platform theory argument did not substantiate its assertions with evidence sufficient to support its platform-based arguments.[128] Because the Exchange has not provided sufficient evidence to establish that competitive forces constrain its ability to price its connectivity fees, it must provide an alternative basis to support the proposed fees.[129] As described above, however, the Exchange has not met that burden here.

Finally, in the BOX 1 Petition and BOX 3 Petition, the Exchange asserts that its smaller market share and the fact that it is not a member of a multi-exchange group make it ''especially unreasonable for the Division to subject the Exchange to more exacting regulatory scrutiny than its competitors'' in its analysis of the Exchange's proposed rule changes.[130] The Exchange also argues that Order Instituting Proceedings I and Order Instituting Proceedings III are inconsistent with the Commission's Remand Order with respect to the related proceedings that remained pending before the Commission issued its October 16, 2018 decision, discussed above.[131] Specifically, BOX asserts that Order Instituting Proceedings I and Order Instituting Proceedings III ''single [ ] out the Exchange for disparate treatment because the Exchange—unlike every other exchange whose rule changes were the subject of the remand ruling—is not permitted to continue charging the challenged fees during the remand proceedings.'' [132]

To the extent that the Exchange is asserting that BOX 1, BOX 2 and BOX 3 should be approved on these bases, the Commission disagrees. The Remand Order did not alter the applicable Exchange Act standards. And, as described throughout this order, we are unable to find that the proposed rule changes before us meet those standards based on the current record.

Nor has the Exchange been singled out for disparate treatment. As discussed above, Order Instituting Proceedings I is not the only order suspending a proposed fee change and instituting proceedings. Indeed, two other orders instituting proceedings were issued the same day with respect to proposed rule changes filed by MIAX and PEARL. Nor did the Order Instituting Proceedings I treat BOX differently with respect to the Remand Order because that Order did not issue until a month later.

Moreover, that BOX is not permitted to continue charging its fees during the proceedings subject to the Remand Order is a consequence of the procedural posture of the rule changes at the time that separate order issued—in this case, the Commission's separate determination under Exchange Act Section 19(b)(3)(C) that the suspension was necessary and appropriate ''to allow for additional analysis of the proposed rule change's consistency with the [Exchange] Act and the rules thereunder.''

The Remand Order did not change the status of any of the challenged rule changes or plan amendments at the time of the remand. Some of those rule changes and plan amendments had instituted new fees for market data and market access, and some did not. Some of those rule changes and plan amendments involved fees currently in force, and some did not. The Remand Order did not distinguish between any of the challenged filings. Nor did the Remand Order create any new opportunities for exchanges or plans to charge fees; it only maintained the status quo during the remand. In the instance of the proposed rule changes at issue here, the status quo was determined by the suspension order instituted the previous month—proceedings under Section 19(b) had already been instituted.

Finally, the Remand Order allows BOX to continue to collect other challenged fees. Six proposed rule changes filed by BOX were challenged by SIFMA over the past three years.[133]

[125] The Commission notes that, because the Exchange challenged the Division's action by delegated authority to institute proceedings on February 13, 2019, which triggered an automatic stay of the action by delegated authority, the Exchange was permitted to charge the connectivity fees on February 28, 2019. Similarly, because of the Exchange's earlier challenge to BOX 1, the Exchange could have charged its proposed fees on September 30, 2018 and October 31, 2018. One commenter expressed concern that, by filing substantially identical filings in this manner, the Exchange was ''exploiting the Commission's procedures in a manner that is contrary to the Commission's intent, protecting investors, the public interest, and the law.'' Specifically, the commenter expressed its view that even though the Commission has directly suspended the proposed rule changes, the Exchange continues to file substantively identical fee filings and bill its customers for the higher fees despite the suspensions. *See* Healthy Markets Letter III, *supra* note 38, at 2–3. The commenter also expressed concern that ''at least one of BOX's customers has expressed frustration, and has challenged the imposition of the repeatedly suspended fees.'' *Id.* at 3. Finally, the commenter noted that BOX responded to these complaints by changing the procedures through which customers may dispute its fees.'' *Id.* at 3–4. The Exchange responded by stating that no Participant has complained to the Exchange about the fees and further stated that no challenges to its fees have been initiated. *See* BOX Response Letter III, *supra* note 39, at 2. The Exchange also noted that it recently filed a proposed rule change to amend its procedures regarding invoice disputes, but stated that that filing is unrelated to its connectivity fee proposals. *Id.* On March 27, 2019, a former customer of BOX submitted a comment letter, which, among other things, contested the veracity of certain statements in BOX Response Letter III. Specifically, the commenter indicated that it had in fact challenged the imposition of BOX's connectivity fees on August 18, 2018, and further stated that it found the timing of BOX's changes to its fee dispute process concerning. The commenter also indicated that, as a result of the proposed fees, it was forced to terminate being a vendor of record for the HSVF feed. *See* R2G Letter, *supra* note 41, at 1–2. Another commenter represented that it would be significantly affected by the proposed fee and noted that the amount of the fee would prohibit it from participating in trades on BOX. As a result, the commenter stated that it had terminated its access to BOX pending the Commission's decision on the proposed rule changes. *See* Prakash Letter, *supra* note 42.

[126] *See* SIFMA Decision, *supra* note 55, at 29.

[127] *See id.* at 31–32.

[128] *See id.* at 36.

[129] *See id.* at 50 (quoting 2008 ArcaBook Approval Order, *supra* note 76, at 74781 (''[T]he exchanges still may meet their burden to demonstrate consistency with the [Act] by establishing 'a substantial basis, other than competitive forces, . . . demonstrating that the terms of the proposal are equitable, fair, reasonable, and not unreasonably discriminatory.' '')).

[130] *See* BOX 1 Petition, *supra* note 15, at 14; BOX 3 Petition, *supra* note 36, at 9.

[131] *See supra* notes 57 and 58 and accompanying text.

[132] *See* Gibson Dunn Statement, *supra* note 18, at 5; BOX 3 Petition, supra note 36, at 10.

[133] SR–BOX–2018–24 (challenged by File No. 3–18680 (filed Aug. 24, 2018)); SR–BOX–2018–16 (challenged by File No. 3–18572 (filed July 2,

Five of these rule changes went into effect without being suspended. These rule changes, among other things, instituted or raised port fees. The Remand Order maintains the status quo and allows BOX to continue charging any of these fees still in force as it conducts proceedings on remand. It was only in the sixth instance that the Commission suspended the proposed rule changes and instituted proceedings. BOX has not been singled out for disparate treatment.[134]

IV. Conclusion

For the reasons set forth above, the Commission does not find that the proposed rule changes are consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, Sections 6(b)(4), 6(b)(5), and 6(b)(8) of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[135] that the proposed rule changes (SR–BOX–2018–24, SR–BOX–2018–37, and SR–BOX–2019–04) be, and hereby are, disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[136]

Eduardo A. Aleman,

Deputy Secretary.

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2018)); SR–BOX–2018–15 (challenged by File No. 3–18525 (filed May 31, 2018)); SR–BOX–2017–31 (challenged by 3–18286 (filed Nov. 17, 2017)); SR–BOX–2016–40 (challenged by File No. 3–17663 (filed Nov. 8, 2016)); SR–BOX–2015–39 (challenged by File No. 3–17040 (filed Jan. 8, 2016)).

[134] The Commission notes that BOX 2 and BOX 3 were both filed after the Remand Order and therefore are not subject to the Remand Order.

[135] 15 U.S.C. 78s(b)(2).

[136] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85474; File No. SR–CboeBZX–2019–019]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Make Certain Changes to the Listing Rule Governing the Listing and Trading of the Shares of the WisdomTree Japan Multifactor Fund and the WisdomTree Europe Multifactor Fund of the WisdomTree in Order for Such Funds To Be Listed and Traded on the Exchange Under Rule 14.11(i) (''Managed Fund Shares'')

March 29, 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 March 15, 2019, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') is filing with the Securities and Exchange Commission (''Commission'') a proposal to make certain changes to the listing rule governing the listing and trading of the shares of the WisdomTree Japan Multifactor Fund and the WisdomTree Europe Multifactor Fund of the WisdomTree in order for [these] Funds to be listed and traded on the Exchange under Rule 14.11(i) (''Managed Fund Shares'').

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

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 shares of the Funds (the ''Shares'') are currently listed and traded on the Exchange pursuant to the generic listing standards under Rule 14.11(c), which governs the listing and trading of Index Fund Shares on the Exchange. The Exchange is proposing to continue listing and trading the Shares on the Exchange with certain changes to each Fund's potential holdings, but under Rule 14.11(i), which governs the listing and trading of Managed Fund Shares on the Exchange. The Exchange submits this proposal in order to allow the Funds to hold OTC currency swaps in a manner that does not comply with Exchange Rule 14.11(i)(4)(C)(v).

The Shares are offered by the WisdomTree Trust, which was established as a Delaware statutory trust on December 15, 2005. WisdomTree Asset Management, Inc. (the ''Adviser'') acts as adviser to the Funds. Mellon Investments Corporation acts as sub-adviser (the ''Sub-Adviser'') to the Funds. The Trust is registered with the Commission as an investment company and has filed two Form 497 Supplements to its registration statement on Form N–1A (''Registration Statement'') with the Commission on behalf of the Funds outlining the changes described herein.[5]

Exchange Rule 14.11(i)(7) provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect and maintain a ''fire wall'' between the investment adviser and the

[5] *See* Registration Statement for the Trust (File Nos. 333–132380 811–21864) and Form 497 Supplements dated January 18, 2019. The descriptions of the Funds and the Shares contained herein are based on information in the Registration Statement.

broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.[6] In addition, Exchange Rule 14.11(i)(7) further requires that personnel who make decisions on the investment company's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable investment company portfolio. Exchange Rule 14.11(i)(7) is similar to Exchange Rule 14.11(b)(5)(A)(i) (which applies to index-based funds); however, Exchange Rule 14.11(i)(7) in connection with the establishment of a ''fire wall'' between the investment adviser and the broker-dealer reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds. The Adviser is not a registered broker-dealer and is not affiliated with any broker-dealers that are in the business of buying or selling securities. The Sub-Adviser is affiliated with multiple broker-dealers and has implemented and will maintain a ''fire wall'' with respect to such broker-dealers and their personnel regarding access to information concerning the composition and/or changes to a Fund's portfolio. In addition, Sub-Adviser personnel who make decisions regarding a Fund's portfolio are subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding such Fund's portfolio. In the event that (a) the Adviser or the Sub-Adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

Each Fund intends to qualify each year as a regulated investment company under Subchapter M of the Internal Revenue Code of 1986, as amended.

The Exchange submits this proposal in order to allow the Funds to hold OTC currency swaps in a manner that does not comply with Exchange Rule 14.11(i)(4)(C)(v),[7] Otherwise, the Funds will comply with all other listing requirements on an initial and continued listing basis under Exchange Rule 14.11(i) for Managed Fund Shares (the ''Generic Listing Standards'').

WisdomTree Japan Multifactor Fund

As amended in the applicable Form 497 Supplement, the Japan Fund will seek income and capital appreciation. The Japan Fund will be actively managed using a model-based approach and will seek to achieve its investment objective by investing primarily in Japanese equity securities that exhibit certain characteristics that the Adviser believes to be indicative of positive future returns based on a model developed by the Adviser. The Adviser will seek to identify equity securities that have the highest potential for returns based on proprietary measures of fundamental factors, such as value and quality, and technical factors, such as momentum and correlation. The Adviser will employ a quantitative model to identify which securities the Japan Fund might purchase and sell and opportune times for purchases and sales. At a minimum, the Japan Fund's portfolio will be rebalanced quarterly according to the Adviser's quantitative model, although a more active approach may be taken depending on such factors as market conditions and investment opportunities, and the number of holdings in the Japan Fund may vary.

The Adviser will seek to manage the Japan Fund's currency risk by dynamically hedging currency fluctuations in the relative value of the Japanese yen against the U.S. dollar (the ''Japan Currency Hedge''), ranging from a 0% to 100% hedge. The hedge ratios are adjusted as frequently as weekly utilizing signals such as interest rate differentials, momentum, and value.

Under Normal Market Conditions,[8] the Japan Fund will hold only the following instruments: Non-U.S. Component Stocks,[9] American Depositary Receipts (''ADRs''), U.S. exchange-listed ETFs,[10] cash and Cash Equivalents,[11] and OTC currency swaps. As noted above, all of the Japan Fund's holdings will meet the Generic Listing Standards with the exception of its holdings in OTC currency swaps, which may not meet the requirement under Rule 14.11(i)(4)(C)(v) that prevents the aggregate gross notional value of OTC derivatives from exceeding 20% of the weight of the portfolio (including gross notional exposures).

[6] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[7] In particular, the Funds may not meet the requirement under Exchange Rule 14.11(i)(4)(C)(v) that the aggregate gross notional value of OTC derivatives shall not exceed 20% of the weight of the portfolio (including gross notional exposures).

[8] The term ''Normal Market Conditions'' includes, but is not limited to, the absence of trading halts in the applicable financial markets generally; operational issues causing dissemination of inaccurate market information or system failures; or force majeure type events such as natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance. In response to adverse market, economic, political, or other conditions, the Fund reserves the right to invest in U.S. government securities, other money market instruments (as defined below), and cash, without limitation, as determined by the Adviser or Sub-Adviser. In the event the Fund engages in these temporary defensive strategies that are inconsistent with its investment strategies, the Fund's ability to achieve its investment objectives may be limited.

[9] As defined in Rule 14.11(c)(1)(E), the term ''Non-U.S. Component Stock'' shall mean an equity security that (a) is not registered under Sections 12(b) or 12(g) of the Act, (b) is issued by an entity that is not organized, domiciled or incorporated in the United States, and (c) is issued by an entity that is an operating company (including Real Estate Investment Trusts (REITs) and income trusts, but excluding investment trusts, unit trusts, mutual funds, and derivatives).

[10] For purposes of this filing the term ETF shall mean Portfolio Depository Receipts as defined in Rule 14.11(b), Index Fund Shares as defined in Rule 14.11(c), and Managed Fund Shares as defined in Rule 14.11(i), or the equivalent product type on other national securities exchanges. With respect to Index Fund Shares, the underlying index shall be referred to herein as an ''Index.''

[11] As defined in Rule 14.11(i)(4)(C)(iii), Cash Equivalents are short-term instruments with maturities of less than three months that are: (i) U.S. Government securities, including bills, notes, and bonds differing as to maturity and rates of interest, which are either issued or guaranteed by the U.S. Treasury or by U.S. Government agencies or instrumentalities; (ii) certificates of deposit issued against funds deposited in a bank or savings and loan association; (iii) bankers acceptances, which are short-term credit instruments used to finance commercial transactions; (iv) repurchase agreements and reverse repurchase agreements; (v) bank time deposits, which are monies kept on deposit with banks or savings and loan associations for a stated period of time at a fixed rate of interest; (vi) commercial paper, which are short-term unsecured promissory notes; and (vii) money market funds.

WisdomTree Europe Multifactor Fund

As amended in the applicable Form 497 Supplement, the Europe Fund will seek income and capital appreciation. The Europe Fund will be actively managed using a model-based approach and will seek to achieve its investment objective by investing primarily in European equity securities that exhibit certain characteristics that the Adviser believes to be indicative of positive future returns based on a model developed by the Adviser. The Adviser will seek to identify equity securities that have the highest potential for returns based on proprietary measures of fundamental factors, such as value and quality, and technical factors, such as momentum and correlation. The Adviser will employ a quantitative model to identify which securities the Europe Fund might purchase and sell and opportune times for purchases and sales. At a minimum, the Europe Fund's portfolio will be rebalanced quarterly according to the Adviser's quantitative model, although a more active approach may be taken depending on such factors as market conditions and investment opportunities, and the number of holdings in the Europe Fund may vary.

The Adviser will seek to manage the Europe Fund's currency risk by dynamically hedging currency fluctuations in the relative value of the euro against the U.S. dollar (collectively, with the Japan Currency Hedge, the ''Currency Hedge''), ranging from a 0% to 100% hedge. The hedge ratios are adjusted as frequently as weekly utilizing signals such as interest rate differentials, momentum, and value.

Under Normal Market Conditions, the Europe Fund will hold only the following instruments: Non-U.S. Component Stocks, ADRs, U.S. exchange-listed ETFs, cash and Cash Equivalents, and OTC currency swaps. As noted above, the Europe Fund's holdings will meet the Generic Listing Standards with the exception of its holdings in OTC currency swaps, which may not meet the requirement under Rule 14.11(i)(4)(C)(v) that prevents the aggregate gross notional value of OTC derivatives from exceeding 20% of the weight of the portfolio (including gross notional exposures).

The Trust is required to comply with Rule 10A–3 under the Act [12] for the initial and continued listing of the Shares of each Fund. In addition, the Exchange represents that the Shares of each Fund will meet and be subject to all other requirements of the Generic Listing Rules and continued listing requirements for Managed Fund Shares under Exchange Rule 14.11(i), including those requirements regarding the Disclosed Portfolio (as defined in the Exchange rules) and the requirement that the Disclosed Portfolio and the net asset value (''NAV'') will be made available to all market participants at the same time,[13] intraday indicative value,[14] suspension of trading or removal,[15] trading halts,[16] disclosure,[17] firewalls,[18] and surveillance.[19] All statements and representations made in this filing regarding the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of reference assets and intraday indicative values, and the applicability of Exchange listing rules specified in this filing shall constitute continued listing requirements for the Funds. The Trust, on behalf of the Funds, has represented to the Exchange that it will advise the Exchange of any failure by a Fund or the Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will surveil for compliance with the continued listing requirements. If a Fund or the Shares are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12.

Precedent and Policy Discussion

As described above, the Funds meet all of the Generic Listing Standards except as it may relate to their holdings in OTC currency swaps, which would be used to achieve their respective Currency Hedge. The Exchange believes that this proposal does not raise any substantive issues for the Commission to review because there are numerous instances in which the Commission has approved the listing and trading of series of Managed Fund Shares that employ nearly identical or substantially similar hedging strategies,[20] especially when compared to the Hedged ADR Approval Order. Specifically, the Hedged ADR Approval Order approved the listing and trading of eighteen series of Managed Fund Shares (the ''Hedged ADR Funds''), each of which consisted of only two components: (i) A single ADR; and (ii) OTC currency swaps used to hedge against fluctuations in the exchange rate between the U.S. dollar and the local currency of the foreign security underlying the ADR. In addition to not meeting Rule 14.11(i)(4)(C)(v) related to the OTC currency swaps used to hedge currency exposure, each series of the Hedged ADR Funds also did not meet the concentration [21] and diversity [22] requirements related to their respective equity holdings. Stated another way, the Funds are proposing to implement a Currency Hedge using the same instruments as the Hedged ADR Funds with the same limits on such instruments, but do not require the additional relief from the equity holdings portion of the Generic Listing Standards that was necessary for the Hedged ADR Funds to list and trade.

Further, the Exchange believes that, while the portfolios of the Funds might not meet Rule 14.11(i)(4)(C)(v), the policy issues that the rule is intended to address are otherwise mitigated by the structure and purpose of the Currency Hedge within the Funds.[23] Specifically, the Exchange believes that the policy issues that Rule 14.11(i)(4)(C)(v) is intended to address are mitigated by the way that the Funds would use OTC currency swaps. The rule is intended to mitigate concerns around the manipulability of a particular underlying reference asset or derivatives contract and to minimize counterparty risk. While the Currency Hedge

[12] 17 CFR 240.10A–3.

[13] *See* Exchange Rules 14.11(i)(4)(A)(ii) and 14.11(i)(4)(B)(ii).

[14] *See* Exchange Rule 14.11(i)(4)(B)(i).

[15] *See* Exchange Rule 14.11(i)(4)(B)(iii).

[16] *See* Exchange Rule 14.11(i)(4)(B)(iv).

[17] *See* Exchange Rule 14.11(i)(6).

[18] *See* Exchange Rule 14.11(i)(7).

[19] *See* Exchange Rules 14.11(i)(2)(C).

[20] *See* Securities Exchange Act Release Nos. 84143 (September 14, 2018), 83 FR 47659 (September 20, 2018) (SR–CboeBZX–2018–019) (order approving the listing and trading of eighteen series of Managed Fund Shares that allowed each series to hedge its foreign equity position with up to 50% gross notional exposure to OTC currency swaps) (the ''Hedged ADR Approval Order''); 84818 (December 13, 2018), 83 FR 65189 (December 19, 2018) (SR–NYSEArca–2018–75) (order approving the listing and trading of a series of Managed Fund Shares that may hold up to 50% of the aggregate gross notional value of the fund's portfolio in OTC derivatives for the purpose of reducing currency, interest rate, credit, or duration risk, in addition to allowing the fund to hold an additional 20% of non-hedging OTC derivatives); 82591 (January 26, 2018) 83 FR 4707 (February 1, 2018) (SR–BatsBZX–2017–54) (the ''Inflation Hedged Fund'') (order approving the listing and trading of a series of Managed Fund Shares that could gain up to 50% gross notional exposure to OTC derivatives in order to hedge against inflation in the fund's portfolio); and 83363 (June 1, 2018), 83 FR 26531 (June 7, 2018) (SR–CboeBZX–2018–036) (notice of filing and immediate effectiveness of a proposal to allow the Inflation Hedged Fund to move increase its potential exposure to OTC derivative instruments from 50% to 60% of the fund's gross notional value).

[21] *See* Rule 14.11(i)(4)(C)(i)(a)(3).

[22] *See* Rule 14.11(i)(4)(C)(i)(a)(4).

[23] Each Fund expects to invest in excess of 80% of its net assets in Non-U.S. Component Stocks in a manner that will comply with the Generic Listing Standards.

positions taken by the Funds may not meet the Generic Listing Standards related to OTC derivatives holdings, the policy concerns about limiting exposure to potentially manipulable underlying reference assets that the Generic Listing Standards are intended to address are otherwise mitigated by the liquidity in the underlying spot currency market that prevents manipulation of the reference prices used by the Currency Hedge.[24] The Funds will attempt to limit counterparty risk in OTC currency swaps by: (i) Entering into such contracts only with counterparties the Adviser and/or Sub-Adviser believes are creditworthy; (ii) limiting a Fund's exposure to each counterparty; and (iii) monitoring the creditworthiness of each counterparty and the Fund's exposure to each counterparty on an ongoing basis.

Availability of Information

As noted above, the Funds will each comply with the requirements for Managed Fund Shares related to Disclosed Portfolio, Net Asset Value, and the Intraday Indicative Value. Additionally, the intra-day, closing and settlement prices of Non-U.S. Component Stocks, ADRs, and ETFs will be readily available from the securities exchanges on which such securities are traded, as well as published or other public sources, or online information services such as Bloomberg or Reuters. Intraday price quotations on OTC currency swaps are available from major broker-dealer firms and from third-parties, which may provide prices free with a time delay or in real-time for a paid fee. Price information for cash equivalents will be available from major market data vendors. Each Fund's Disclosed Portfolio will be available on the issuer's website (*www.WisdomTree.com*) free of charge. Each Fund's website will include the prospectus for the applicable Fund and additional information related to NAV and other applicable quantitative information. Information regarding market price and trading volume of the Shares will be continuously available throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume for the Shares will be published daily in the financial section of newspapers. Trading in the Shares may be halted for market conditions or for reasons that, in the view of the Exchange, make trading inadvisable. The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. The Exchange has appropriate rules to facilitate trading in the shares during all trading sessions.

Surveillance

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Funds on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Funds through the Exchange will continue to be subject to the Exchange's surveillance procedures for derivative products, including Managed Fund Shares. The issuer has represented to the Exchange that it will advise the Exchange of any failure by a Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will surveil for compliance with the continued listing requirements. If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting proceedings under Rule 14.12. The Exchange may obtain information regarding trading in the Funds, ADRs, ETFs, and certain of the Non-U.S. Component Stocks that are held by each Fund via the ISG, from other exchanges that are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement. Additionally, the Exchange or FINRA, on behalf of the Exchange, are able to access, as needed, trade information for certain fixed income instruments reported to TRACE.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act[25] in general and Section 6(b)(5) of the Act[26] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. Specifically, the Exchange believes that the proposal is consistent with Rule 6(b)(5) of the Act in that is designed to prevent fraudulent and manipulative acts and practices because the policy concerns about limiting exposure to potentially manipulable underlying reference assets that the Generic Listing Standards are intended to address, specifically Rule 14.11(i)(4)(C)(v) related to OTC derivatives holdings, are otherwise mitigated by the liquidity in the underlying spot currency market that prevents manipulation of the reference prices used by the Currency Hedge. Specifically, the Exchange believes that the policy issues that Rule 14.11(i)(4)(C)(v) is intended to address are mitigated by the way that the Funds would use OTC currency swaps. The rule is intended to mitigate concerns around the manipulability of a particular underlying reference asset or derivatives contract and to minimize counterparty risk. As noted above, while the Currency Hedge positions that might be taken by the Funds may not meet the Generic Listing Standards related to OTC derivatives holdings, the policy concerns about limiting exposure to potentially manipulable underlying reference assets that the Generic Listing Standards are intended to address are otherwise mitigated by the liquidity in the underlying spot currency market that prevents manipulation of the reference prices used by the Currency Hedge. The Funds will attempt to limit counterparty risk in OTC currency swaps by: (i) Entering into such contracts only with counterparties the Adviser and/or Sub-Adviser believes are creditworthy; (ii) limiting a Fund's exposure to each counterparty; and (iii) monitoring the creditworthiness of each counterparty and the Fund's exposure to each counterparty on an ongoing basis.

The Exchange also notes that there are numerous instances in which the Commission has approved the listing and trading of series of Managed Fund Shares that employ nearly identical or substantially similar hedging strategies.[27] Specifically, the Hedged

[24] Based on statistics reported by the Bank for International Settlements, there is significant liquidity in the spot market for the euro and the Japanese yen. *See* ''Turnover of OTC foreign exchange instruments, by currency'' available at: *https://stats.bis.org/statx/srs/table/d11.3*.

[25] 15 U.S.C. 78f.

[26] 15 U.S.C. 78f(b)(5).

[27] *See* Securities Exchange Act Release Nos. 84143 (September 14, 2018), 83 FR 47659 (September 20, 2018) (SR–CboeBZX–2018–019) (order approving the listing and trading of eighteen series of Managed Fund Shares that allowed each series to hedge its foreign equity position with up to 50% gross notional exposure to OTC currency swaps) (the ''Hedged ADR Approval Order''); 84818 (December 13, 2018), 83 FR 65189 (December 19, 2018) (SR–NYSEArca–2018–75) (order approving the listing and trading of a series of Managed Fund Shares that may hold up to 50% of the aggregate gross notional value of the fund's portfolio in OTC derivatives for the purpose of reducing currency, interest rate, credit, or duration risk, in addition to allowing the fund to hold an additional 20% of non-hedging OTC derivatives); 82591 (January 26, 2018) 83 FR 4707 (February 1, 2018) (SR–BatsBZX–

ADR Approval Order approved the listing and trading of eighteen series of Managed Fund Shares (the ''Hedged ADR Funds''), each of which consisted of only two components: (i) A single ADR; and (ii) OTC currency swaps used to hedge against fluctuations in the exchange rate between the U.S. dollar and the local currency of the foreign security underlying the ADR. In addition to not meeting Rule 14.11(i)(4)(C)(v) related to the OTC currency swaps used to hedge currency exposure, each series of the Hedged ADR Funds also did not meet the concentration [28] and diversity [29] requirements related to their respective equity holdings. Stated another way, the Funds are proposing to implement a Currency Hedge using the same instruments as the Hedged ADR Funds with the same limits on such instruments, but do not require the additional relief from the equity holdings portion of the Generic Listing Standards that was necessary for the Hedged ADR Funds to list and trade.

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Funds on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Funds through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Managed Fund Shares. All statements and representations made in this filing regarding the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of reference assets and intraday indicative values, and the applicability of Exchange listing rules specified in this filing shall constitute continued listing requirements for the Funds. The Trust, on behalf of the Funds, has represented to the Exchange that it will advise the Exchange of any failure by a Fund or the Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will surveil for compliance with the continued listing requirements. If a Fund or the Shares are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12.

As described above, all ADRs and ETFs will be listed on a U.S. national securities exchange, all of which are members of ISG or are exchanges with which the Exchange has in place a comprehensive surveillance sharing agreement.[30] The Exchange may obtain information regarding trading in the Funds, ADRs, ETFs, and certain Non-U.S. Component Stocks held by each Fund via the ISG, from other exchanges that are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement. Additionally, the Exchange or FINRA, on behalf of the Exchange, are able to access, as needed, trade information for certain fixed income instruments reported to TRACE.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of additional series of Managed Fund Shares that will enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the 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 [31] and Rule 19b–4(f)(6) thereunder.[32]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [33] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [34] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Exchange asserts that there is no reason for delay because, as noted above, the Funds are proposing to implement a Currency Hedge using the same instruments as the Hedged ADR Funds with the same limits on such instruments and requiring the 30-day delay before the filing becomes operative will not further any underlying policy goals related to the protection of investors and the public interest. According to the Exchange, waiver of the 30-day operative delay would more quickly facilitate the Adviser's ability to fully implement its Currency Hedge, which would enhance competition among market participants, to the benefit of investors and the marketplace. For those reasons, the Exchange asserts that waiver of the operative delay would be consistent with the protection of investors and the public interest. The Commission believes that the proposal raises no new or substantive issues and that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[35]

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

2017–54) (the ''Inflation Hedged Fund'') (order approving the listing and trading of a series of Managed Fund Shares that could gain up to 50% gross notional exposure to OTC derivatives in order to hedge against inflation in the fund's portfolio); and 83363 (June 1, 2018), 83 FR 26531 (June 7, 2018) (SR–CboeBZX–2018–036) (notice of filing and immediate effectiveness of a proposal to allow the Inflation Hedged Fund to move increase its potential exposure to OTC derivative instruments from 50% to 60% of the fund's gross notional value).

[28] *See* Rule 14.11(i)(4)(C)(i)(a)(3).

[29] *See* Rule 14.11(i)(4)(C)(i)(a)(4).

[30] For a list of the current members and affiliate members of ISG, *see www.isgportal.com.* The Exchange notes that not all components of the Disclosed Portfolio for the Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[31] 15 U.S.C. 78s(b)(3)(A).

[32] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[33] 17 CFR 240.19b–4(f)(6).

[34] 17 CFR 240.19b–4(f)(6)(iii).

[35] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–CboeBZX–2019–019 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeBZX–2019–019. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBZX–2019–019 and should be submitted on or before April 25, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[36]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–06528 Filed 4–3–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85458; File No. SR–CBOE–2019–018]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Amend Rule 6.42, Interpretation and Policy .04 To Specify That Replacement Issues May Be Added to the Penny Pilot Program ("Pilot") on a Quarterly Basis, Without Altering the Expiration Date of the Pilot, Which Is June 30, 2019

March 29, 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 March 22, 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 and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") proposes to amend Rule 6.42, Interpretation and Policy .04 to specify that replacement issues may be added to the Penny Pilot Program ("Pilot") on a quarterly basis, without altering the expiration date of the Pilot, which is June 30, 2019. The text of the proposed rule change is provided below.

(additions are *italicized;* deletions are [bracketed])

* * * * *

Rules of Cboe Exchange, Inc.

* * * * *

Rule 6.42. Minimum Increments for Bids and Offers

(a)–(b) No change.

. . . *Interpretations and Policies:*

.01–.03 No change.

.04 The Exchange may replace any option class participating in the Penny Pilot Program that has been delisted with the next most actively traded, multiply listed option class, based on national average daily volume in the preceding six calendar months, that is not yet included in the Pilot Program. Any replacement class would be added on the second trading day *in the first month of each quarter* [following January 1, 2019]. The Penny Pilot will expire on June 30, 2019.

* * * * *

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 6.42, Interpretation and Policy .04, regarding the Pilot, to specify that replacement issues may be added to the Pilot on a quarterly basis, without altering the expiration date of the Pilot, which is June 30, 2019. The Exchange recently filed to extend the Pilot until June 30, 2019 (from December 31, 2018) and also updated the rule text to provide that replacement issues may be added to the Pilot on the second trading day following January 1, 2019.[5] The

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[36] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 84940 (December 21, 2018), 83 FR 67759 (December 31,

Rule authorizes the Exchange to replace any options issues in the Pilot that have been delisted with the next most actively traded multiply listed options classes that are not yet included in the Program, based on trading activity in the previous six months.[6] The Exchange proposes to modify Rule 6.42, Interpretation and Policy .04 to allow the Exchange to add replacement issues (for Pilot issues that have been delisted) on a quarterly basis. The Exchange added replacement issues in January 2019 and would be able to add eligible replacement issues in April, July and October. The Exchange believes this change would allow the Exchange to update issues eligible for the Pilot (by replacing delisted issues) on a quarterly basis (as opposed to semi-annual) and would enable further analysis of the Pilot and a determination of how the Pilot should be structured in the future.

As is the case today, the Exchange will determine replacement issues based on trading activity in the previous six months (the ''six-month lookback'') but will not use the month immediately preceding the addition of a replacement to the Pilot. Thus, a replacement class to be added on the second trading day following April 1, 2019 would be identified based on The Option Clearing Corporation's trading volume data from September 1, 2018 through February 28, 2019.[7] The Exchange believes the six-month lookback is appropriate because this time period would help reduce the impact of unusual trading activity as a result of unique market events, such as a corporate action (*i.e.,* it would result in a more reliable measure of average daily trading volume than would a shorter period).

This filing does not propose any substantive changes to the Pilot: All classes currently participating will remain the same and all minimum increments will remain unchanged. The Exchange believes the benefits to public customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh the increase in quote traffic.

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. Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes the proposal to allow the addition of replacement issues the Pilot on a quarterly basis would result in a more current list of Pilot-eligible issues and would enable further analysis of the Pilot, including for a determination of how the Pilot should be structured in the future. Further, the Exchange believes the six-month lookback is appropriate because this time period would help reduce the impact of unusual trading activity as a result of unique market events, such as a corporate action (*i.e.,* it would result in a more reliable measure of average daily trading volume than would a shorter period). Thus, the Exchange believes this proposal would promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in facilitating transactions in securities, and remove impediments to and perfect the mechanisms of a free and open market and a national market system.

The Exchange notes that it is not making any other substantive changes to the Pilot, other than modifying the timing for replacement issues and therefore the Exchange will continue to participate in a program that has been viewed as beneficial to traders, investors and public customers and viewed as successful by the other options exchanges participating in it. The Exchange believes that the Pilot would continue to promote just and equitable principles of trade by enabling public customers and other market participants to express their true prices to buy and sell options to the benefit of all market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that allowing the Exchange to add replacement issues to the Pilot on a quarterly basis would make the list of Pilot-eligible issues more current and would enable further analysis of the Pilot, including for a determination of how the Pilot should be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection. The Pilot Program is an industry-wide initiative supported by all other option exchanges. The Exchange believes that the proposed change would allow for continued competition between Exchange market participants trading similar products as their counterparts on other exchanges, while at the same time allowing the Exchange to continue to compete for order flow with other exchanges in option issues trading as part of the Pilot.

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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become

2018) (SR–CBOE–2018–076). On January 3, 2019, the Exchange added new issues to replace delisted Pilot issues, as announced by Product Update, available here, *http://markets.cboe.com/resources/product_update/2019/Penny-Pilot-Replacement-Classes-for-January-3-2019-Updated.pdf.*

[6] See Rule 6.42, Interpretation and Policy .04.

[7] The Exchange will continue to announce the replacement issues by Exchange Notice. *See supra* note 5.

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [10] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[11] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The change will allow the Exchange to add classes to the pilot that are actively traded at the start of the second quarter (*i.e.,* in April 2019) and replace those that have been delisted and are no longer trading on a more frequent basis. This will help ensure that the top 363 most actively traded, multiply-listed classes are included in the Pilot, which will enable further analysis of the Pilot.[12]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [13] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2019–018 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2019–018. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–CBOE–2019–018 and should be submitted on or before April 25, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–06517 Filed 4–3–19; 8:45 am]

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[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78s(b)(2)(B).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85450; File No. SR–NYSEARCA–2019–07]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Options Fees and Charges and the NYSE Arca Equities Fees and Charges Related to Co-Location Services

March 29, 2019.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on March 15, 2019, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Options Fees and Charges (the ''Options Fee Schedule'') and the NYSE Arca Equities Fees and Charges (the ''Equities Fee Schedule'' and, together with the Options Fee Schedule, the ''Fee Schedules'') related to co-location services to provide access to the execution system of Global OTC. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

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 amend the Fee Schedules related to co-location [4] services offered by the Exchange to provide Users [5] with access to the execution system of Global OTC (the ''Global OTC System''). Global OTC is an alternative trading system (''ATS'') that facilitates transactions in over-the-counter equity securities.[6]

The Exchange proposes to implement the rule change on the first day of the month after it becomes operative. The Exchange will announce the implementation date through a customer notice.

As set forth in the Fee Schedules, the Exchange charges fees for connectivity to the execution systems of third party markets and other content service providers (''Third Party Systems'').[7] The Exchange has an indirect interest in Global OTC because it is owned by the Exchange's ultimate parent, Intercontinental Exchange, Inc.[8] The Exchange proposes to treat Global OTC as a Third Party System and add it to the list of Third Party Systems set forth in the Fee Schedules.

As with the current Third Party Systems, in order to obtain access to the Global OTC System, the User would enter into an agreement with Global OTC, pursuant to which Global OTC would charge the User for access to the Global OTC System. Once the Exchange receives authorization from Global OTC, the Exchange would establish a connection between the User and the Global OTC System.[9]

As with the existing connections to Third Party Systems, the Exchange proposes to charge a monthly recurring fee for connectivity to the Global OTC System. The Exchange does not propose to change the current fee, which is for connectivity only.[10]

Currently, connectivity to the Third Party Systems is over the internet protocol (''IP'') network, a local area network available in the data center.[11] Users would have two options for connecting to the OTC Global System: Over the IP network or the Liquidity Center Network (''LCN''), the other local area network available in the data center.[12] Accordingly, the Exchange proposes to amend the third sentence of the paragraph under ''Connectivity to Third Party Systems'' in the Fee Schedules to state that ''[c]onnectivity to Third Party Systems is over the IP network, with the exception that Users can connect to Global OTC over the IP network or LCN.''

The proposed treatment of Global OTC would be consistent with its treatment in other contexts. The Exchange also treats Global OTC as a third party with respect to connectivity to data feeds from third party markets and other content service providers (the ''Third Party Data Feeds'').[13] The Exchange proposes that Users could connect to the Global OTC System over the IP network or LCN: This is substantially the same as with Third Party Data Feeds, where ''[c]onnectivity . . . is over the IP network, with the exception that Users can connect to Global OTC and ICE Data Global Index over the IP network or LCN.'' [14]

The Exchange would provide access to the Global OTC System (''Access'') as a convenience to Users. Use of Access is completely voluntary, and it is the Exchange's understanding that currently third party options are available to a User to access the Global OTC System. The Exchange is not aware of any impediment to additional third parties offering such access. With respect to third parties that presently offer, or in the future opt to offer, access to the Global OTC Systems, a User may access such services through the Secure Financial Transaction Infrastructure (''SFTI'') network, a third party telecommunication network, third party wireless network, a cross connect, or a combination thereof to access such services and products through a connection to an access center outside the data center (which could be a SFTI access center, a third-party access center, or both), another User, or a third party vendor.

Establishing a User's access to the Global OTC System would not give the Exchange any right to use the Global OTC System. Connectivity to the Global OTC System would not provide access or order entry to the Exchange's execution system, and a User's connection to the Global OTC System would not be through the Exchange's execution system.

General

As is the case with all Exchange co-location arrangements, (i) neither a User nor any of the User's customers would be permitted to submit orders directly to the Exchange unless such User or customer is a member organization, a Sponsored Participant or an agent thereof (*e.g.,* a service bureau providing order entry services); (ii) use of the co-location services proposed herein would be completely voluntary and available to all Users on a non-discriminatory basis; [15] and (iii) a User would only incur one charge for the particular co-location service described herein,

[4] The Exchange initially filed rule changes relating to its co-location services with the Commission in 2010. *See* Securities Exchange Act Release No. 63275 (November 8, 2010), 75 FR 70048 (November 16, 2010) (SR–NYSEArca–2010–100). The Exchange operates a data center in Mahwah, New Jersey (the ''data center'') from which it provides co-location services to Users.

[5] For purposes of the Exchange's co-location services, a ''User'' means any market participant that requests to receive co-location services directly from the Exchange. *See* Securities Exchange Act Release No. 76010 (September 29, 2015), 80 FR 60197 (October 5, 2015) (SR–NYSEArca–2015–82). As specified in the Fee Schedules, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates New York Stock Exchange LLC (''NYSE''), NYSE American LLC (''NYSE American''), and NYSE National, Inc. (''NYSE National'' and, together, the ''Affiliate SROs''). *See* Securities Exchange Act Release No. 70173 (August 13, 2013), 78 FR 50459 (August 19, 2013) (SR–NYSEArca–2013–80).

[6] *See* 17 CFR 242.300(a). An ATS is a trading system that meets the definition of ''exchange'' under federal securities laws but is not required to register as a national securities exchange if the ATS operates under an exemption provided under the Act.

[7] *See* Securities Exchange Act Release No. 80310 (March 24, 2017), 82 FR 15763 (March 30, 2017) (SR–NYSEArca–2016–89) (notice of filing of Partial Amendment No. 4 and order granting accelerated approval of a proposed rule change, as modified by Amendment Nos. 1 through 4, to amend the co-location services offered by the Exchange to add certain access and connectivity fees).

[8] *See* Securities Exchange Act Release No. 79673 (December 22, 2016), 81 FR 96107 (December 29, 2016) (SR–NYSEArca–2016–89), fn. 21 (notice of filing of Amendments Nos. 2 and 3 to proposed rule change amending the co-location services offered by the Exchange to add certain access and connectivity fees).

[9] *See* 82 FR 15763, *supra* note 7, at 15765.

[10] *Id.*

[11] *See* Securities Exchange Act Release No. 74219 (February 6, 2015), 80 FR 7899 (February 12, 2015) (SR–NYSEArca–2015–03) (notice of filing and immediate effectiveness of proposed rule change to include IP network connections).

[12] *See* Securities Exchange Act Release No. 79729 (January 4, 2017), 82 FR 3061 (January 10, 2017) (SR–NYSEArca–2016–172) (notice of filing and immediate effectiveness of proposed rule change amending the Exchange's Fee Schedules related to colocation services to increase LCN and IP Network fees and add a description of access to trading and execution services and connectivity to included data products).

[13] *See* 81 FR 96107, *supra* note 8, at 96109–96110.

[14] Options Fee Schedule, at 23; Equities Fee Schedule, at 38; *see* 81 FR 96107, *supra* note 8, at note 20.

[15] As is currently the case, Users that receive co-location services from the Exchange will not receive any means of access to the Exchange's trading and execution systems that is separate from, or superior to, that of other Users. In this regard, all orders sent to the Exchange enter the Exchange's trading and execution systems through the same order gateway, regardless of whether the sender is co-located in the data center or not. In addition, co-located Users do not receive any market data or data service product that is not available to all Users, although Users that receive co-location services normally would expect reduced latencies in sending orders to, and receiving market data from, the Exchange.

regardless of whether the User connects only to the Exchange or to the Exchange and one or more of the Affiliate SROs.[16]

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed fee change is consistent with Section 6(b) of the Act,[17] in general, and furthers the objectives of Sections 6(b)(5) of the Act,[18] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed changes would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because, by offering access to the Global OTC System, the Exchange would give each User additional options for addressing its access needs, responding to User demand for access options. Providing additional services would help each User tailor its data center operations to the requirements of its business operations by allowing it to select the form and latency of access that best suits its needs.

The Exchange would provide Access as a convenience to Users. Use of Access is completely voluntary, and it is the Exchange's understanding that currently third party options are available to a User to access the Global OTC System. The Exchange is not aware of any impediment to additional third parties offering such access. With respect to third parties that presently offer, or in the future opt to offer, access to the Global OTC Systems, a User may access such services through the SFTI network, a third party telecommunication network, third party wireless network, a cross connect, or a combination thereof to access such services and products through a connection to an access center outside the data center (which could be a SFTI access center, a third-party access center, or both), another User, or a third party vendor.

The Exchange believes that the proposed change would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because the proposed treatment of Global OTC would be consistent with its treatment in other contexts. The Exchange also treats Global OTC as a third party with respect to connectivity to Third Party Data Feeds.[19] The Exchange proposes that Users could connect to the Global OTC System over the IP network or LCN: This is substantially the same as with Third Party Data Feeds, where connectivity is over the IP network, with the exception that Users can connect to Global OTC and one other Third Party Data Feed over the IP network or LCN.[20]

The Exchange also believes that the proposed fee change is consistent with Section 6(b)(4) of the Act,[21] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed fee change is consistent with Section 6(b)(4) of the Act for multiple reasons. The Exchange operates in a highly competitive market in which exchanges offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. Accordingly, fees charged for co-location services are constrained by the active competition for the order flow of, and other business from, such market participants. If a particular exchange charges excessive fees for co-location services, affected market participants will opt to terminate their co-location arrangements with that exchange, and adopt a possible range of alternative strategies, including placing their servers in a physically proximate location outside the exchange's data center (which could be a competing exchange), or pursuing strategies less dependent upon the lower exchange-to-participant latency associated with co-location. Accordingly, the exchange charging excessive fees would stand to lose not only co-location revenues but also the liquidity of the formerly co-located trading firms, which could have additional follow-on effects on the market share and revenue of the affected exchange.

The Exchange believes that the proposed charges would be reasonable, equitably allocated and not unfairly discriminatory because it would treat connectivity to the Global OTC System the same as connectivity to the execution system of other ATSs. Currently, the Third Party Systems include two ATSs.[22]

The Exchange believes that the additional service proposed herein would be equitably allocated and not unfairly discriminatory because, in addition to Access being completely voluntary, it would be available to all Users on an equal basis (*i.e.,* the same Access would be available to all Users). All Users that voluntarily selected to receive Access would be charged the same amount for the same service. Users that opted to use Access would not receive access that is not available to all Users, as all market participants that contracted with Global OTC would receive access.

The Exchange believes that the proposed charges would be reasonable, equitably allocated and not unfairly discriminatory because the Exchange would offer the Access as a convenience to Users, but in order to do so must provide, maintain and operate the data center facility hardware and technology infrastructure. The Exchange must handle the installation, administration, monitoring, support and maintenance of such services, including by responding to any production issues. Since the inception of co-location, the Exchange has made numerous improvements to the network hardware and technology infrastructure and has established additional administrative controls. The Exchange has expanded the network infrastructure to keep pace with the increased number of services available to Users, including resilient and redundant feeds. In addition, in order to provide Access, the Exchange would maintain multiple connections to the Global OTC System, allowing the Exchange to provide resilient and redundant connections; adapt to any

[16] *See* 78 FR 50459, *supra* note 5, at 50459. NYSE, NYSE American, and NYSE National have submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSE–2019–07, SR–NYSEAmer–2019–03, and SR–NYSENAT–2019–03.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

[19] *Supra* note 13.

[20] *Supra* note 14.

[21] 15 U.S.C. 78f(b)(4).

[22] Credit Suisse and OTC Markets have ATSs. *See* Commission list of ATSs at *https://www.sec.gov/foia/docs/atslist.htm.*

changes made by Global OTC; and cover any applicable fees charged by Global OTC, such as port fees. In addition, Users would not be required to use any of their bandwidth for Access unless they wish to do so.

The Exchange believes the fees for Access are reasonable because they allow the Exchange to defray or cover the costs associated with offering Users Access while providing Users the convenience of receiving such Access within co-location, helping them tailor their data center operations to the requirements of their business operations.

For the reasons above, the proposed changes would not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[23] the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because all of the proposed services are completely voluntary.

The Exchange believes that providing Users with additional options for access to the Global OTC Systems would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because such proposed Access would satisfy User demand for access options. The Exchange would provide Access as a convenience to Users. Use of Access is completely voluntary, and it is the Exchange's understanding that currently third party options are available to a User to access the Global OTC System. The Exchange is not aware of any impediment to additional third parties offering such access. With respect to third parties that presently offer, or in the future opt to offer, access to the Global OTC Systems, a User may access such services through the SFTI network, a third party telecommunication network, third party wireless network, a cross connect, or a combination thereof to access such services and products through a connection to an access center outside the data center (which could be a SFTI access center, a third-party access center, or both), another User, or a third party vendor.

Users that opt to use the proposed Access would not receive access that is not available to all Users, as all market participants that contract with Global OTC may receive access. In this way, the proposed changes would enhance competition by helping Users tailor their Access to the needs of their business operations by allowing them to select the form and latency of access and connectivity that best suits their needs.

The Exchange believes that the proposed change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because it would treat connectivity to the Global OTC System the same as connectivity to the execution system of other ATSs. Specifically, they would all be Third Party Systems subject to the same fees. In addition, the proposed treatment of Global OTC would be consistent with its treatment in other contexts. The Exchange also treats Global OTC as a third party with respect to connectivity to Third Party Data Feeds.[24]

Currently, connectivity to the Third Party Systems is over the IP network. The Exchange believes that allowing Users to connect to the Global OTC System over either the IP network or LCN would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Currently, the Third Party Systems include two ATS, of which the Exchange believes OTC Markets is the most comparable to Global OTC, although Global OTC is substantially the smaller of the two.[25] While an LCN connection provides lower latency than the IP network, that latency difference is relevant, as a practical matter, only for connections within the Mahwah data center, where the Global OTC System is located. When connecting to a comparable, competing ATS located in another data center, such as OTC Markets, Users within the Mahwah data center would incur geographical latency that would dwarf any differences between the IP network and LCN. Furthermore, it is the Exchange's understanding that market participants trading in non-NMS securities tend to be less latency sensitive due to the smaller pools of liquidity in the over-the-counter markets.

Allowing Users to connect to the Global OTC System would be consistent with the treatment of Third Party Data Feeds, where connectivity is over the IP network, with the exception that Users can connect to Global OTC and one other Third Party Data Feed over the IP network or LCN.[26]

The Exchange operates in a highly competitive market in which exchanges offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. Accordingly, fees charged for co-location services are constrained by the active competition for the order flow of, and other business from, such market participants. If a particular exchange charges excessive fees for co-location services, affected market participants will opt to terminate their co-location arrangements with that exchange, and adopt a possible range of alternative strategies, including placing their servers in a physically proximate location outside the exchange's data center (which could be a competing exchange), or pursuing strategies less dependent upon the lower exchange-to-participant latency associated with co-location. Accordingly, the exchange charging excessive fees would stand to lose not only co-location revenues but also the liquidity of the formerly co-located trading firms, which could have additional follow-on effects on the market share and revenue of the affected exchange. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[27] and Rule 19b–4(f)(6) thereunder.[28] Because the proposed rule change does not: (i) Significantly affect the protection of

[23] 15 U.S.C. 78f(b)(8).

[24] *Supra* note 13.

[25] Both Global OTC and the OTC Markets are inter-dealer quotation systems. The third is the OTC Bulletin Board, a facility of the Financial Industry Regulatory Authority. Global OTC's market share is approximately 10% of average daily volume of trades of over-the-counter equities, compared to OTC Markets' market share of approximately 90% of average daily volume of trades. *See https://www.globalotc.com/brokers/market-share.*

[26] *Supra* note 14.

[27] 15 U.S.C. 78s(b)(3)(A)(iii).

[28] 17 CFR 240.19b–4(f)(6).

investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[29]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[30] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEARCA–2019–07 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEARCA–2019–07. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEARCA–2019–07 and should be submitted on or before April 25, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–06508 Filed 4–3–19; 8:45 am]

BILLING CODE 8011–01–P

[29] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[30] 15 U.S.C. 78s(b)(2)(B).

[31] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85453; File No. SR–BOX–2019–08]

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Allow for Replacement Issues To Be Added to the Penny Pilot Program ("Pilot Program") on a Quarterly Basis

March 29, 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 March 22, 2019, BOX Exchange LLC (the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend BOX Rule 7260 (Penny Pilot Program) to allow for replacement issues to be added to the Pilot Program on a quarterly basis, without altering the expiration date of the Pilot Program, which is June 30, 2019. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's internet website at *http://boxoptions.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend BOX Rule 7260 (Penny Pilot Program) to allow for replacement issues to be added to the Pilot Program on a quarterly basis, without altering the expiration date of the Pilot Program. This is a competitive filing that is based on a proposal recently submitted by NYSE American LLC ("NYSEAMER").[3]

The Exchange recently filed to extend the Pilot Program until June 30, 2019 (from December 31, 2018) and also updated the rule text to provide that replacement issues may be added to the Pilot on the second trading day following January 1, 2019.[4] The Rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 34–85348 (March 18, 2019) (Order Approving SR–NYSEAMER–2019–05).

[4] *See* Securities Exchange Act Release No. 34–84869 (December 19, 2018), 83 FR 66806 (December 27, 2018) (SR–BOX–2018–38). On January 3, 2019, the Exchange added new issues to replace delisted Pilot Program issues, as announced by Regulatory Circular, *available here, https://boxoptions.com/*

authorizes the Exchange to replace any options issues in the Pilot Program that have been delisted with the next most actively traded multiply listed options classes that are not yet included in the Pilot Program, based on trading activity in the previous six months.[5] The Exchange proposes to modify BOX Rule 7260 to allow the Exchange to add replacement issues (for Pilot issues that have been delisted) on a quarterly basis. The Exchange added replacement issues in January 2019 and would be eligible to add replacement issues in April, July, and October. The Exchange believes this change would allow the Exchange to update issues eligible for the Pilot Program (by replacing delisted issues) on a quarterly basis (as opposed to semi-annual) and would enable further analysis of the Pilot Program and a determination of how the Pilot Program should be structured in the future.

As is the case today, the Exchange will determine replacement issues based on trading activity in the previous six months (the ''six month lookback'') but will not use the month immediately preceding the addition of a replacement to the Pilot Program. Thus, a replacement class to be added on the second trading day following April 1, 2019 would be identified based on The Option Clearing Corporation's trading volume data from September 1, 2018 through February 28, 2019.[6] The Exchange believes the six month lookback is appropriate because this time period would help reduce the impact of unusual trading activity as a result of unique market events, such as corporate action (*i.e.,* it would result in a more reliable measure of average daily trading volume than would a shorter period).

This filing does not propose any substantive changes to the Pilot Program: All classes currently participating will remain the same and all minimum increments will remain unchanged. The Exchange believes the benefits to public customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh the increase in quote traffic. Lastly, in order to conform to the proposed Pilot Program, the Exchange proposes to remove the specific dates for the lookback period and replace it with language referencing the previous six months. This language replacement will have no substantive impact on the rule.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[7] in general, and Section 6(b)(5) of the Act,[8] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. In particular, the Exchange believes the proposal to allow the addition of replacement issues to the Pilot Program on a quarterly basis would result in a more current list of Pilot-eligible issues and would enable further analysis of the Pilot Program, including for a determination of how the Pilot Program should be structured in the future. Further, the Exchange believes the six month lookback is appropriate because this time period would help reduce the impact of unusual trading activity as a result of unique market events, such as a corporate action (*i.e.,* it would result in a more reliable measure of average daily trading volume than would a shorter period). Thus, the Exchange believes this proposal would promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in facilitating transactions in securities, and remove impediments to and perfect the mechanisms of a free and open market and a national market system.

The Exchanges notes that it [sic] not making any other substantive changes to the Pilot Program, other than modifying the timing for replacement issues and therefore the Exchange will continue to participate in a program that has been viewed as beneficial to traders, investors and public customers and viewed as successful by the other options exchanges participating in it.

The Exchange believes that the Pilot Program would continue to promote just and equitable principles of trade by enabling public customers and other market participants to express their true prices to buy and sell options to the benefit of all market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In this regard and as indicated above, the Exchange notes that the rule change is being proposed as a competitive response to a filing submitted by NYSEAMER.[9] In addition, the Exchange believes that allowing the Exchange to add replacement issues to the Pilot Program on a quarterly basis would make the list of Pilot-eligible issues more current and would enable further analysis of the Pilot, including for a determination of how the Pilot Program should be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection. The Pilot Program is an industry-wide initiative supported by all other option exchanges. The Exchange believes that the proposed change would allow for continued competition between Exchange market participants trading similar products as their counterparts on other exchanges, while at the same time allowing the Exchange to continue to compete for order flow with other exchanges in option issues trading as part of the Pilot Program.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which

assets/RC-2019-01-Penny-Pilot-Issue-Replacements-Update-v2.pdf.

[5] *See* BOX Rule 7260.

[6] The Rule continues to obligate the Exchange to announce the replacement issues by Regulatory Circular. *See id.*

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] *See supra,* note 3.

[10] 15 U.S.C. 78s(b)(3)(A)(iii).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [12] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[13] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The change will allow the Exchange to add classes to the pilot that are actively traded at the start of the second quarter (*i.e.,* in April 2019) and replace those that have been delisted and are no longer trading on a more frequent basis. This will help ensure that the top 363 most actively traded, multiply-listed classes are included in the Pilot, which will enable further analysis of the Pilot.[14]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [15] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BOX–2019–08 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–BOX–2019–08. 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, on business days between the hours of 10 a.m. and 3 p.m., located at 100 F Street NE, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–BOX–2019–08 and should be submitted on or before April 25, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–06512 Filed 4–3–19; 8:45 am]

BILLING CODE 8011–01–P

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78s(b)(2)(B).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85464; File No. SR–C2–2019–006]

Self-Regulatory Organizations; Cboe C2 Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Amend Rule 6.4, Interpretation and Policy .02 To Specify That Replacement Issues May Be Added to the Penny Pilot Program (''Pilot'') on a Quarterly Basis, Without Altering the Expiration Date of the Pilot, Which is June 30, 2019

March 29, 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 March 22, 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 and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe C2 Exchange, Inc. (the ''Exchange'' or ''C2'') proposes to amend Rule 6.4, Interpretation and Policy .02 to specify that replacement issues may be added to the Penny Pilot Program (''Pilot'') on a quarterly basis, without altering the expiration date of the Pilot, which is June 30, 2019. The text of the proposed rule change is provided below.

(additions are *italicized*; deletions are [bracketed])

* * * * *

Rules of Cboe C2 Exchange, Inc.

* * * * *

Rule 6.4. Minimum Increments for Bids and Offers

(a)–(b) No change.

Interpretations and Policies . . .

.01 No change.

.02 The Exchange may replace any option class participating in the Penny

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

Pilot Program that has been delisted with the next most actively traded, multiply listed option class, based on national average daily volume in the preceding six calendar months, that is not yet included in the Pilot Program. Any replacement class would be added on the second trading day *in the first month of each quarter* [following January 1, 2019]. The Penny Pilot will expire on June 30, 2019.

* * * * *

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 6.4, Interpretation and Policy .02, regarding the Pilot, to specify that replacement issues may be added to the Pilot on a quarterly basis, without altering the expiration date of the Pilot, which is June 30, 2019. The Exchange recently filed to extend the Pilot until June 30, 2019 (from December 31, 2018) and also updated the rule text to provide that replacement issues may be added to the Pilot on the second trading day following January 1, 2019.[5] The Rule authorizes the Exchange to replace any options issues in the Pilot that have been delisted with the next most actively traded multiply listed options classes that are not yet included in the Program, based on trading activity in the previous six months.[6] The Exchange proposes to modify Rule 6.4, Interpretation and Policy .02 to allow the Exchange to add replacement issues (for Pilot issues that have been delisted) on a quarterly basis. The Exchange added replacement issues in January 2019 and would be able to add eligible replacement issues in April, July and October. The Exchange believes this change would allow the Exchange to update issues eligible for the Pilot (by replacing delisted issues) on a quarterly basis (as opposed to semi-annual) and would enable further analysis of the Pilot and a determination of how the Pilot should be structured in the future.

As is the case today, the Exchange will determine replacement issues based on trading activity in the previous six months (the ''six-month lookback'') but will not use the month immediately preceding the addition of a replacement to the Pilot. Thus, a replacement class to be added on the second trading day following April 1, 2019 would be identified based on The Option Clearing Corporation's trading volume data from September 1, 2018 through February 28, 2019.[7] The Exchange believes the six-month lookback is appropriate because this time period would help reduce the impact of unusual trading activity as a result of unique market events, such as a corporate action (*i.e.,* it would result in a more reliable measure of average daily trading volume than would a shorter period).

This filing does not propose any substantive changes to the Pilot: All classes currently participating will remain the same and all minimum increments will remain unchanged. The Exchange believes the benefits to public customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh the increase in quote traffic.

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. Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes the proposal to allow the addition of replacement issues the Pilot on a quarterly basis would result in a more current list of Pilot-eligible issues and would enable further analysis of the Pilot, including for a determination of how the Pilot should be structured in the future. Further, the Exchange believes the six-month lookback is appropriate because this time period would help reduce the impact of unusual trading activity as a result of unique market events, such as a corporate action (*i.e.,* it would result in a more reliable measure of average daily trading volume than would a shorter period). Thus, the Exchange believes this proposal would promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in facilitating transactions in securities, and remove impediments to and perfect the mechanisms of a free and open market and a national market system.

The Exchange notes that it is not making any other substantive changes to the Pilot, other than modifying the timing for replacement issues and therefore the Exchange will continue to participate in a program that has been viewed as beneficial to traders, investors and public customers and viewed as successful by the other options exchanges participating in it. The Exchange believes that the Pilot would continue to promote just and equitable principles of trade by enabling public customers and other market participants to express their true prices to buy and sell options to the benefit of all market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that allowing the Exchange to add replacement issues to

[5] *See* Securities Exchange Act Release No. 84936 (December 21, 2018), 84 FR 840 (January 31, 2019) (SR–C2–2018–026). On January 3, 2019, the Exchange added new issues to replace delisted Pilot issues, as announced by Product Update, available here, *http://markets.cboe.com/resources/product_update/2019/Penny-Pilot-Replacement-Classes-for-January-3-2019-Updated.pdf.*

[6] See Rule 6.4, Interpretation and Policy .02.

[7] The Exchange will continue to announce the replacement issues by Exchange Notice. *See supra* note 5.

the Pilot on a quarterly basis would make the list of Pilot-eligible issues more current and would enable further analysis of the Pilot, including for a determination of how the Pilot should be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection. The Pilot Program is an industry-wide initiative supported by all other option exchanges. The Exchange believes that the proposed change would allow for continued competition between Exchange market participants trading similar products as their counterparts on other exchanges, while at the same time allowing the Exchange to continue to compete for order flow with other exchanges in option issues trading as part of the Pilot.

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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [8] and Rule 19b–4(f)(6) thereunder.[9] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [10] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[11] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The change will allow the Exchange to add classes to the pilot that are actively traded at the start of the second quarter (*i.e.,* in April 2019) and replace those that have been delisted and are no longer trading on a more frequent basis. This will help ensure that the top 363 most actively traded, multiply-listed classes are included in the Pilot, which will enable further analysis of the Pilot.[12]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [13] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–C2–2019–006 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–C2–2019–006. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–C2–2019–006 and should be submitted on or before April 25, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–06529 Filed 4–3–19; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78s(b)(2)(B).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85463; File No. SR–MRX–2019–06]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Supplementary Material .01 to Rule 710, "Minimum Increments"

March 29, 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 March 21, 2019, Nasdaq MRX, LLC ("MRX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Supplementary Material .01 to Rule 710, ''Minimum Increments,'' to specify replacement issues that may be added to the Penny Pilot (''Pilot'') on a quarterly basis, without altering the expiration date of the Pilot, which is June 30, 2019.

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqmrx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Commentary .01 to Rule 710, ''Minimum Increments,'' to specify that replacement issues may be added to the Pilot on a quarterly basis, without altering the expiration date of the Pilot, which is June 30, 2019. The Exchange recently filed to extend the Pilot until June 30, 2019 (from December 31, 2018) and also updated the rule text to provide that replacement issues may be added to the Pilot on the second trading day following January 1, 2019.[3] Currently, Commentary .01 to Rule 710 permits the Exchange to replace any penny pilot issues that have been delisted with the next most actively traded multiply listed options classes that are not yet included in the penny pilot, based on trading activity in the previous six months.

The Exchange proposes to amend Commentary .01 to Rule 710 to permit the Exchange to add replacement issues for Pilot issues that have been delisted on a quarterly basis. The Exchange added replacement issues in January 2019, pursuant to Rule 710 and, with this proposal, would add eligible replacement issues in April, July and October 2019. The Exchange believes this change would allow the Exchange to update issues eligible for the Pilot by replacing delisted issues on a quarterly basis as opposed to semi-annual and would enable further analysis of the Pilot and a determination of how the Pilot should be structured in the future.

As is the case today, the Exchange will determine replacement issues based on trading activity in the previous six months (the ''six month lookback'') but will not use the month immediately preceding the addition of a replacement to the Pilot. Thus, a replacement class to be added on the second trading day following April 1, 2019 would be identified based on The Option Clearing Corporation's trading volume data from September 1, 2018 through February 28, 2019.[4] The Exchange believes the six month lookback is appropriate because this time period would help reduce the impact of unusual trading activity as a result of unique market events, such as a corporate action (*i.e.,* it would result in a more reliable measure of average daily trading volume than would a shorter period).

This filing does not propose any substantive changes to the Pilot. All classes currently participating will remain the same and all minimum increments will remain unchanged. The Exchange believes the benefits to Priority Customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh the increase in quote traffic.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[5] Specifically, the proposed rule change is consistent with Section 6(b)(5) of the Act,[6] because it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes the proposal to allow the addition of replacement issues the Pilot on a quarterly basis would result in the a more current list of Pilot eligible issues and would enable further analysis of the Pilot, including for a determination of how the Pilot should be structured in the future. Further, the Exchange believes the six month lookback is appropriate because this time period would help reduce the impact of unusual trading activity as a result of unique market events, such as a corporate action (*i.e.,* it would result in a more reliable measure of average daily trading volume than would a shorter period). The Exchange believes this proposal would promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in facilitating transactions in securities, and remove impediments to and perfect the mechanisms of a free and open market and a national market system.

The Exchanges notes that it not making any other substantive changes to the Pilot, other than modifying the timing for replacement issues and therefore the Exchange will continue to participate in a program that has been viewed as beneficial to traders, investors and public customers and viewed as successful by the other options exchanges participating in it. The Exchange believes that the Pilot would continue to promote just and equitable principles of trade by enabling Priority Customers and other market participants to express their true prices to buy and sell options to the benefit of all market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[7] the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Specifically, the Exchange believes that allowing the Exchange to add replacement issues to the Pilot on a quarterly basis would make the list of Pilot-eligible issues more current and would enable further analysis of the

[3] *See* Securities Exchange Act Release No. 84959 (December 26, 2018), 84 FR 836 (January 31, 2019) (SR–MRX–2018–41). On January 3, 2019, the Exchange added new issues to replace delisted Pilot issues, as announced by Options Trader Alert #2018–48.

[4] The Exchange would announce any replacement issues via an Options Trader Alert. *See* Commentary .01 to Rule 710.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78f(b)(8).

Pilot, including for a determination of how the Pilot should be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection. The Pilot Program is an industry-wide initiative supported by all other option exchanges. The Exchange believes that the proposed change would allow for continued competition between Exchange market participants trading similar products as their counterparts on other exchanges, while at the same time allowing the Exchange to continue to compete for order flow with other exchanges in option issues trading as part of the Pilot.

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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [8] and Rule 19b–4(f)(6) thereunder.[9] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [10] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[11] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The change will allow the Exchange to add classes to the pilot that are actively traded at the start of the second quarter (*i.e.,* in April 2019) and replace those that have been delisted and are no longer trading on a more frequent basis. This will help ensure that the top 363 most actively traded, multiply-listed classes are included in the Pilot, which will enable further analysis of the Pilot.[12]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [13] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–MRX–2019–06 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–MRX–2019–06. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–MRX–2019–06 and should be submitted on or before April 25, 2019

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–06522 Filed 4–3–19; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78s(b)(2)(B).

[14] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: 30-Day notice.

SUMMARY: The Small Business Administration (SBA) is publishing this notice to comply with requirements of the Paperwork Reduction Act (PRA) which requires agencies to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission. This notice also allows an additional 30 days for public comments.

DATES: Submit comments on or before May 6, 2019.

ADDRESSES: Comments should refer to the information collection by name and/or OMB Control Number and should be sent to: *Agency Clearance Officer,* Curtis

Rich, Small Business Administration, 409 3rd Street SW, 5th Floor, Washington, DC 20416; and *SBA Desk Officer,* Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Curtis Rich, Agency Clearance Officer, (202) 205–7030, *curtis.rich@sba.gov.*

Copies: A copy of the Form OMB 83–1, supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

SUPPLEMENTARY INFORMATION: A team of Quality Assurance staff at the Disaster Assistance Center (DASC) will conduct a brief telephone survey of customers to determine their satisfaction with the services received from the (DASC) and the Field Operations Centers. The result will help the Agency to improve where necessary, the delivery of critical financial assistance to disaster victims.

Title: Disaster Assistance Customer Satisfaction Survey.

Description of Respondents: Disaster Customers satisfaction with service received.

Form Number: SBA Form 2313FOC, 2313CSC.

Estimated Annual Responses: 2,400.

Estimated Annual Hour Burden: 199.

Curtis Rich,

Management Analyst.

[FR Doc. 2019–06563 Filed 4–3–19; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: 30-Day notice.

SUMMARY: The Small Business Administration (SBA) is publishing this notice to comply with requirements of the Paperwork Reduction Act (PRA) which requires agencies to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission. This notice also allows an additional 30 days for public comments.

DATES: Submit comments on or before May 6, 2019.

ADDRESSES: Comments should refer to the information collection by name and/or OMB Control Number and should be sent to: *Agency Clearance Officer,* Curtis Rich, Small Business Administration, 409 3rd Street SW, 5th Floor, Washington, DC 20416; and *SBA Desk Officer,* Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Curtis Rich, Agency Clearance Officer, (202) 205–7030, *curtis.rich@sba.gov.*

Copies: A copy of the Form OMB 83–1, supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

SUPPLEMENTARY INFORMATION: Boots to Business is an entrepreneurial education initiative offered by the U.S. Small Business Administration (SBA) as a career track within the Department of Defense's revised Training Assistance Program called Transition Goals, Plans, Success (Transition GPS). The curriculum provides valuable assistance to transitioning service members exploring self-employment opportunities by leading them through the key steps for evaluating business concepts and the foundational knowledge required for developing a business plan. Participants are also introduced to SBA resources available to help access startup capital and additional technical assistance.

The Boots to Business Post Course surveys will be online, voluntary surveys that enable the Boots to Business program office to capture data related but not limited to the effectiveness of all Boots to Business courses, quality of the instructors and materials, and number of small businesses created as a result of participating in Boots to Business. Boots to Business will send an initial survey via email to all course participants immediately following course completion to gain insight on the quality of the program. Every 6 months following course completion, a follow up survey will be sent to all participants to measure participant outcomes as we link course effectiveness to the creation of veteran owned small businesses. Participants will be surveyed twice a year for 5 years following course completion to allow time for business creation.

Solicitation of Public Comments

Comments may be submitted on (a) whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

Summary of Information Collections

Title: Boots to Business Post Course Surveys.

Description of Respondents: Service members, veterans and spouses.

Form Numbers: N/A.

Estimated Annual Respondents: 3,000.

Estimated Annual Responses: 3,000.

Estimated Annual Hour Burden: 500.

Curtis Rich,

Management Analyst.

[FR Doc. 2019–06559 Filed 4–3–19; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No: SSA–2019–0015]

Agency Information Collection Activities: Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes a revision of an OMB-approved information collection.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB) Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov*

(SSA) Social Security Administration, OLCA, Attn: Reports Clearance Director, 3100 West High Rise, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–966–2830, Email address: *OR.Reports.Clearance@ssa.gov*

Or you may submit your comments online through *www.regulations.gov,* referencing Docket ID Number [SSA–2019–0015].

SSA submitted the information collection below to OMB for clearance. Your comments regarding this

information collection would be most useful if OMB and SSA receive them 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than May 6, 2019. Individuals can obtain copies of the OMB clearance package by writing to *OR.Reports.Clearance@ssa.gov.*

Employer Verification of Records for Children Under Age Seven—20 CFR 404.801–404.803, 404.821–404.822—0960–0505. To ensure we credit the correct person with the reported earnings, SSA verifies wage reports for children under age seven with the children's employers before posting to the earnings record. SSA uses form SSA–L3231–C, Request for Employer Information for this purpose. The respondents are employers who report earnings for children under age seven.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
SSA–L3231–C1	11,823	1	10	1,971

Dated: March 29, 2019.

Faye Lipsky,

Reports Clearance Director, Social Security Administration.

[FR Doc. 2019–06533 Filed 4–3–19; 8:45 am]

BILLING CODE 4191–02–P

TENNESSEE VALLEY AUTHORITY

Meeting of the Regional Energy Resource Council

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Notice of meeting.

SUMMARY: The TVA Regional Energy Resource Council (RERC) will hold a meeting Wednesday, April 17, 2019, and Thursday, April 18, 2019, to discuss the draft results and associated documents relating to TVA's 2019 Integrated Resource Plan (IRP). The RERC was established to advise TVA on its energy resource activities and the priority to be placed among competing objectives and values. Notice of this meeting is given under the Federal Advisory Committee Act (FACA).

DATES: The public meeting will be held on Wednesday, April 17, 2019, from 1 p.m. to 4:30 p.m., EDT, and on Thursday, April 18, 2019, from 8:30 a.m. to 11:30 a.m., EDT.

ADDRESSES: The meeting will be held at the TVA Knoxville Office Complex, 400 West Summit Hill Drive, Knoxville, Tennessee 37902, and will be open to the public. Anyone needing special access or accommodations should let the contact below know at least a week in advance.

FOR FURTHER INFORMATION CONTACT: Liz Upchurch, 865–632–8305, *efupchurch@tva.gov.*

SUPPLEMENTARY INFORMATION:

The meeting agenda includes the following:

1. Introductions
2. Overview of the 2019 draft Integrated Resource Plan and draft Environmental Impact Statement
3. Recap of the public comment period and high level public comment themes
4. Information on the development of a final 2019 Integrated Resource Plan and final Environmental Impact Statement
5. Public Input Session
6. Council Discussion and Advice

The RERC will hear opinions and views of citizens during a public session starting at 3:30 p.m., EDT, lasting up to one hour, on Wednesday, April 17, 2019. Persons wishing to speak are requested to register at the door between 1 p.m. and 3:15 p.m., EDT, on Wednesday, April 17, 2019, and will be called on during the public session. For registered speakers, TVA will set time limits for providing oral comments. Handout materials should be limited to one printed page. Any member of the public is also permitted to leave a written statement with the Council after or in lieu of the member's oral presentation.

Dated: March 29, 2019.

Joseph J. Hoagland,

Vice President, Enterprise Relations and Innovation, Tennessee Valley Authority.

[FR Doc. 2019–06561 Filed 4–3–19; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Membership in the National Parks Overflights Advisory Group

AGENCY: Federal Aviation Administration, Transportation.

ACTION: Notice.

SUMMARY: By **Federal Register** notice on February 19, 2019 the National Park Service (NPS) and the Federal Aviation Administration (FAA) invited interested persons to apply to fill two current openings on the National Parks Overflights Advisory Group (NPOAG) to represent general aviation, and Native American interests. This notice informs the public of the selection made for the vacancy representing general aviation and invites persons interested in serving on the NPOAG to apply for the still current opening representing Native American concerns.

DATES: Persons interested in applying for the NPOAG opening representing Native American concerns need to apply by May 31, 2019.

FOR FURTHER INFORMATION CONTACT: Keith Lusk, Special Programs Staff, Federal Aviation Administration, Western-Pacific Region Headquarters, 727 S Aviation Boulevard, Suite #150, El Segundo, CA 90245, telephone: (424) 405–7017, email: *Keith.Lusk@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The National Parks Air Tour Management Act of 2000 (the Act) was enacted on April 5, 2000, as Public Law 106–181, and subsequently amended in the FAA Modernization and Reform Act of 2012. The Act required the establishment of the advisory group within one year after its enactment. The NPOAG was established in March 2001. The advisory group is comprised of a balanced group of representatives of general aviation, commercial air tour operations, environmental concerns, and Native American tribes. The Administrator of the FAA and the Director of NPS (or their designees) serve as ex officio members of the group. Representatives of the Administrator and Director serve alternating one-year terms as chairman of the advisory group.

In accordance with the Act, the advisory group provides ''advice, information, and recommendations to the Administrator and the Director—

(1) On the implementation of this title [the Act] and the amendments made by this title;

(2) On commonly accepted quiet aircraft technology for use in commercial air tour operations over a national park or tribal lands, which will receive preferential treatment in a given air tour management plan;

(3) On other measures that might be taken to accommodate the interests of visitors to national parks; and

(4) At the request of the Administrator and the Director, safety, environmental, and other issues related to commercial air tour operations over a national park or tribal lands.''

Membership

The current NPOAG is made up of one member representing general aviation, three members representing the commercial air tour industry, four members representing environmental concerns, and two members representing Native American interests. Members serve 3-year terms. Current members of the NPOAG are as follows:

One open seat to represent general aviation; Eric Lincoln, Alan Stephen, and Matt Zuccaro representing commercial air tour operators; Les Blomberg, Rob Smith, John Eastman, and Dick Hingson representing environmental interests; and Carl Slater and one open seat to represent Native American interests.

Selection

Melissa Rudinger of the Aircraft Owners and Pilots Association has been selected for the current open seat to represent general aviation. NPOAG members' 3-year terms commence on the publication date of this **Federal Register** notice. No selection was made for the additional opening to represent Native American interests.

The FAA and NPS invite persons interested in applying for the one remaining opening on the NPOAG to contact Mr. Keith Lusk (contact information is written above in **FOR FURTHER INFORMATION CONTACT**). Requests to serve on the NPOAG must be made to Mr. Lusk in writing and postmarked or emailed on or before May 31, 2019. The request should indicate whether or not you are a member of an association or group related to Native American concerns. The request should also state what expertise you would bring to the NPOAG as related to issues and concerns with aircraft flights over national parks. The term of service for NPOAG members is 3 years. Current members may re-apply for another term.

On August 13, 2014, the Office of Management and Budget issued revised guidance regarding the prohibition against appointing or not reappointing federally registered lobbyists to serve on advisory committees (79 **Federal Register** 47482).

Therefore, before appointing an applicant to serve on the NPOAG, the FAA and NPS will require the prospective candidate to certify that they are not a federally registered lobbyist.

Issued in El Segundo, CA, on March 25, 2019.

Keith Lusk,

Program Manager, Special Programs Staff, Western-Pacific Region.

[FR Doc. 2019–06609 Filed 4–3–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Recruitment Notice for the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: Notice of Open Season for Recruitment of IRS Taxpayer Advocacy Panel (TAP) Members.

DATES: April 8, 2019 through May 3, 2019.

FOR FURTHER INFORMATION CONTACT: Lisa Billups at 214–413–6523 (not a toll-free call).

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Department of the Treasury and the Internal Revenue Service (IRS) are inviting individuals to help improve the nation's tax agency by applying to be members of the Taxpayer Advocacy Panel (TAP). The mission of the TAP is to listen to taxpayers, identify issues that affect taxpayers, and make suggestions for improving IRS service and customer satisfaction. The TAP serves as an advisory body to the Secretary of the Treasury, the Commissioner of Internal Revenue, and the National Taxpayer Advocate. TAP members will participate in subcommittees that channel their feedback to the IRS through the Panel's parent committee.

The IRS is seeking applicants who have an interest in good government, a personal commitment to volunteer approximately 200 to 300 hours a year, and a desire to help improve IRS customer service. As a federal advisory committee, TAP is required to have a fairly balanced membership in terms of the points of view represented. Thus, TAP membership represents a cross-section of the taxpaying public with at least one member from each state, the District of Columbia and Puerto Rico, in addition to one member representing international taxpayers. For application purposes, ''international taxpayers'' are defined broadly to include U.S. citizens working, living, or doing business abroad or in a U.S. territory. Potential candidates must be U.S. citizens, not a current employee of any Bureau of the Treasury Department or have worked for any Bureau of the Treasury Department within the three years of December 1 of the current year and must pass a federal tax compliance check and a Federal Bureau of Investigation criminal background investigation. Applicants who practice before the IRS must be in good standing with the IRS (meaning not currently under suspension or disbarment). Federally-registered lobbyists cannot be members of the TAP. The IRS is seeking members or alternates in the following locations: Alaska, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, West Virginia, Wisconsin, Wyoming.

TAP members are a diverse group of citizens who represent the interests of taxpayers, from their respective geographic locations as well as taxpayers overall. Members provide feedback from a taxpayer's perspective on ways to improve IRS customer service and administration of the federal tax system, by identifying grassroots taxpayer issues. Members should have good communication skills and be able to speak to taxpayers about TAP and its activities, while clearly distinguishing between TAP positions and their personal viewpoints.

Interested applicants should visit the TAP website at *www.improveirs.org* for more information about TAP. Applications may be submitted online at *www.usajobs.gov.* For questions about TAP membership, call the TAP toll-free number, 1–888–912–1227 and select prompt 5. Callers who are outside of the U.S. should call 214–413–6523 (not a toll-free call).

The opening date for submitting applications is April 8, 2019, and the deadline for submitting applications is May 3, 2019. Interviews will be held. The Department of the Treasury will review the recommended candidates and make final selections. New TAP

members will serve a three-year term starting in December 2019. (*Note:* Highly-ranked applicants not selected as members may be placed on a roster of alternates who will be eligible to fill future vacancies that may occur on the Panel.)

Questions regarding the selection of TAP members may be directed to Lisa Billups, Taxpayer Advocacy Panel, Internal Revenue Service, 1111 Constitution Avenue NW, TA:TAP Room 1509, Washington, DC 20224, or 214–413–6523 (not a toll-free call).

Dated: March 29, 2019.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2019–06541 Filed 4–3–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1099–MISC

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, 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 information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Form 1099–MISC, Miscellaneous Income.

DATES: Written comments should be received on or before June 3, 2019 to be assured of consideration.

ADDRESSES: Direct all written comments to L. Brimmer, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this collection should be directed to Sara Covington, (202) 317–6038, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *sara.l.covington@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Miscellaneous Income.

OMB Number: 1545–0115.

Form Number: 1099–MISC.

Abstract: Form 1099–MISC is used by payers to report payments of $600 or more of rents, prizes and awards, medical and health care payments, nonemployee compensation, and crop insurance proceeds, $10 or more of royalties, any amount of fishing boat proceeds, certain substitute payments, golden parachute payments, and an indication of direct sales of $5,000 or more.

Current Actions: There is no change in the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 99,447,800.

Estimated Time per Respondent: 18 min.

Estimated Total Annual Burden Hours: 30,828,818.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 28, 2019.

Laurie Brimmer,

Senior Tax Analyst.

[FR Doc. 2019–06573 Filed 4–3–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

2019 Data Call Under the Terrorism Risk Insurance Program

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Data Collection.

SUMMARY: Pursuant to the Terrorism Risk Insurance Act of 2002 (TRIA), insurers that participate in the Terrorism Risk Insurance Program (TRIP or Program) are directed to submit information for the 2019 TRIP Data Call for the reporting period from January 1, 2018 to December 31, 2018. Participating insurers are required to register and report information in a series of forms approved by the Office of Management and Budget (OMB). All insurers writing commercial property and casualty insurance in lines subject to TRIP must respond to this data call no later than May 15, 2019, subject to certain exceptions identified in this notice.

DATES: Participating insurers must register and submit data no later than May 15, 2019.

ADDRESSES: Participating insurers will register through a website that has been established for this data call. After registration, insurers will receive data collection forms through a secure file transfer portal, and they will submit the requested data through the same secure portal. Participating insurers can register for the 2019 TRIP Data Call at *https://tripsection111data.com/.* Additional information about the data call, including sample data collection forms and instructions, can be found on the TRIP website at *https://www.treasury.gov/resource-center/fin-mkts/Pages/TRIP_data.aspx.*

FOR FURTHER INFORMATION CONTACT: Richard Ifft, Senior Insurance Regulatory Policy Analyst, Federal Insurance Office, Room 1410 MT, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220, at (202) 622–2922 (this is not a toll-free number), or Lindsey Baldwin, Senior Policy Analyst, Federal Insurance Office, Room 1410 MT, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220, at (202) 622–3220 (this is not a toll-free number). Persons who have difficulty hearing or speaking may access these numbers via TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

TRIA [1] created the Program within the U.S. Department of the Treasury (Treasury) to address disruptions in the market for terrorism risk insurance, to help ensure the continued availability and affordability of commercial property and casualty insurance for terrorism risk, and to allow for the private market to stabilize and build insurance capacity to absorb any future losses for terrorism events. The Program has been reauthorized on a number of occasions, most recently in the Terrorism Risk Insurance Program Reauthorization Act of 2015 (2015 Reauthorization Act).[2] Section 111 of the 2015 Reauthorization Act [3] (Section 111) requires the Secretary of the Treasury (Secretary) to perform periodic analyses of the Program. In order to assist the Secretary with this process, Section 111 requires insurers to submit on an annual basis certain insurance data and information regarding their participation in the Program.[4] The Federal Insurance Office (FIO) is authorized to assist the Secretary in the administration of the Program,[5] including conducting the annual data call.

On November 9, 2018, Treasury published the data collection forms that it proposed to use in the 2019 TRIP Data Call, and invited the public to provide comments concerning these forms.[6] Treasury received two comments.[7] In response, and as discussed further below, Treasury has made a number of modifications to the forms and instructions. OMB has approved the use of these forms under Control Number 1505–0257.

II. Changes to 2019 Data Call

For purposes of the 2019 TRIP Data Call, FIO, state insurance regulators, and the National Association of Insurance Commissioners (NAIC) will again utilize the consolidated data call mechanism first developed for use in the 2018 TRIP Data Call. This approach relies upon four (4) joint reporting templates—to be completed by Small Insurers, Non-Small Insurers, Alien Surplus Lines Insurers, and Captive Insurers, as identified further below—and is designed to satisfy the regulatory objectives of both Treasury and state insurance regulators. Additionally, the joint reporting templates reduce burden on participating insurers. State insurance regulators and/or the NAIC will provide separate notification regarding the reporting of information into the state reporting portal, including any supplemental information reporting requirements to state insurance regulators separate from what is required by Treasury.

A. Reporting Process

Insurers subject to the consolidated data call will report on a group basis, unless they are not part of a group, in which case they will report on an individual company basis. For the 2019 Data Call, Treasury will again work with the National Council on Compensation Insurance (NCCI), the California Workers' Compensation Insurance Rating Bureau (California WCIRB), and the New York Compensation Insurance Rating Board (NYCIRB) to provide (either directly or through other workers' compensation rating bureaus), on behalf of participating insurers, the workers' compensation insurance elements of the data call relating to premium and payroll information. The data aggregator used by Treasury will provide such insurers with reporting templates that do not require them to report this workers' compensation data. Reporting insurers that only write workers' compensation policies are still required to register for the data call, provide general company information, and provide data related to private reinsurance. The data received from NCCI, the California WCIRB, and/or the NYCIRB will be merged with the information provided by the insurers.

B. Reporting Templates

There are two principal changes to the reporting templates from the 2018 TRIP Data Call. First, the exposures worksheet, which is included within all four reporting templates, has been modified to include questions seeking information on policy limits for nuclear, biological, chemical, and radiological (NBCR) exposures, as a subset of the total reported policy limits covering terrorism risk. Second, a new modeled loss question (which includes an NBCR component) is included on the reinsurance worksheet that will be completed by non-small insurers, alien surplus lines insurers, and captive insurers.[8]

The comments received posed a number of questions concerning the manner of reporting contemplated under the proposed reporting templates, including the connection between the federal and state data calls. Although the comments concerning the manner of reporting did not indicate any changes to the forms or instructions that should be made, Treasury will provide further instructions concerning the completion of the forms through webinars that it will conduct, particularly in connection with the new data elements for NBCR insurance limits. In addition, Treasury has made minor changes to the forms as originally proposed to correct typographical errors and to make language consistent across forms.

Furthermore, one comment suggested a number of changes to the modeled loss question. In response to this comment, Treasury made a number of changes to the modeled loss question, designed to make it easier for reporting insurers to respond to the hypothetical scenario presented.

There are also a number of template changes required by the Program regulations that are specific to individual insurer categories. For the 2019 TRIP Data Call, an insurer will qualify as a small insurer if it had both *2017* policyholder surplus of less than $800 million and *2017* direct earned premiums in TRIP-eligible lines of insurance of less than $800 million.[9] Of this group, small insurers with TRIP-eligible direct earned premiums of less than $10 million in *2018* will be exempt from the 2019 TRIP Data Call.[10] Neither captive insurers nor alien surplus lines insurers are eligible for this reporting exemption. Insurers defined as small insurers for the 2019 Data Call will report the same information to Treasury (on a group basis) and state insurance regulators (also on a group basis), except as state insurance regulators may

[1] Public Law 107–297, 116 Stat. 2322, codified at 15 U.S.C. 6701, note. Because the provisions of TRIA (as amended) appear in a note, instead of particular sections, of the United States Code, the provisions of TRIA are identified by the sections of the law.

[2] Public Law 114–1, 129 Stat. 3.

[3] TRIA sec. 104(h).

[4] Treasury regulations also address the annual data collection requirement. *See* 31 CFR 50.51, 50.54.

[5] 31 U.S.C. 313(c)(1)(D).

[6] 83 FR 56152 (Nov. 9, 2018).

[7] Treasury received comments from the Sentry Insurance Group and AIR Worldwide. The comments are available at *https://www.regulations.gov/docket?D=TREAS-TRIP-2018-0026*.

[8] *See generally* 83 FR 56152, 56152–53 (Nov. 9, 2018). Small insurers complete a separate reinsurance worksheet that does not contain a modeled loss question.

[9] Small insurers are defined in 31 CFR 50.4(z) as insurers (or an affiliated group of insurers) whose policyholder surplus for the immediately preceding year is less than five times the Program Trigger for the current year, and whose TRIP-eligible lines direct earned premium for the previous year is also five times less than the Program Trigger. Accordingly, for the 2019 Data Call, an insurer qualifies as a small insurer if its 2017 policyholder surplus and 2017 direct earned premium are less than five times the 2018 Program Trigger of $160 million.

[10] Individual insurers with less than $10 million in TRIP-eligible lines direct earned premium that are part of a larger group must still report as part of the group as a whole, if the group's TRIP-eligible lines direct earned premium is over $10 million.

separately direct for purposes of the state data call.

The non-small insurer template will be completed by insurance groups (or individual insurers not affiliated with a group) that had either a 2017 policyholder surplus of greater than $800 million or 2017 direct earned premium in TRIP-eligible lines of insurance equal to or greater than $800 million, and that are not subject to reporting on the captive insurer or alien surplus lines insurer reporting templates. Otherwise, insurers defined as non-small insurers for the 2019 Data Call will report the same information to Treasury (on a group basis) and state insurance regulators (also on a group basis), except as state insurance regulators may separately direct for purposes of the state data call.

The reporting template for captive insurers does not contain additional changes specific to those insurers. Captive insurers are defined in 31 CFR 50.4(g) as insurers licensed under the captive insurance laws or regulations of any state. Captive insurers that wrote policies in TRIP-eligible lines of insurance during the reporting period are required to register and submit data to Treasury, unless they did not provide their insureds with any terrorism risk insurance subject to the Program.

The reporting template for alien surplus lines insurers does not contain additional changes specific to those insurers. Alien surplus lines insurers are defined in 31 CFR 50.4(o)(1)(i)(B) as insurers not licensed or admitted to engage in the business of providing primary or excess insurance in any state, but that are eligible surplus line insurers listed on the NAIC Quarterly Listing of Alien Insurers. Alien surplus lines insurers that are part of a larger group classified as a non-small insurer or a small insurer should report to Treasury as part of the group, using the appropriate template. Therefore, the alien surplus lines insurer template should only be used by an alien surplus lines insurer that is not part of a larger group subject to the 2019 Data Call.

C. Supplemental Reference Documents

Treasury will continue to make available on its data collection website (*https://www.treasury.gov/resource-center/fin-mkts/Pages/TRIP_data.aspx*) documents providing a complete ZIP code listing for areas subject to reporting on the Geographic Exposures (Nationwide) worksheet, as well as several hypothetical policy reporting scenarios.

D. Training Webinars

As in prior years, Treasury will hold four (4) separate training sessions corresponding to the four reporting templates that will be used by insurers (Alien Surplus Lines Insurers, Captive Insurers, Insurer (Non-Small) Groups or Companies, and Small Insurers). The webinars will be held on April 9 and April 10, 2019 to assist reporting insurers in responding to the proposed collection, with each webinar focusing on a specific reporting template. Specific times and details concerning participation in the webinar will be made available on the TRIP data collection website, and recordings of each webinar will be made available on the website following each training session.

III. 2019 TRIP Data Call

For the 2019 TRIP Data Call, which covers the reporting period of January 1, 2018 to December 31, 2018, Treasury will continue to use four different data collection templates.[11] Insurers will fill out the template for ''Insurer (Non-Small) Groups or Companies,'' unless the insurer meets the definition of a small insurer, captive insurer, or alien surplus insurer, as set forth in 31 CFR 50.4. Such small insurers, captive insurers, and alien surplus lines insurers are required to complete an alternate template.

Treasury, through an insurance statistical aggregator, will accept group or insurer registration forms through *https://tripsection111data.com/*. Upon registration, the aggregator will transmit individualized data collection forms (in Excel format) to the reporting group or insurer via a secure file transfer portal. The reporting group or insurer may transmit a complete data submission via the same portal using either the provided Excel forms or a .csv file.[12]

Copies of the instructions and data collection forms are available on Treasury's website in read-only format. Reporting insurers will obtain the fillable reporting forms directly from the data aggregator after registering for the data collection process.

Reporting insurers are required to register and submit complete data to Treasury no later than May 15, 2019. Because of the timing and content of Treasury's 2019 report to Congress, no extensions will be granted. Reporting insurers can ask the data aggregator questions about registration, form completion, and submission through *tripsection111data@iso.com*. Treasury, as identified above, may also be contacted directly with questions. Questions regarding submission of data to state insurance regulators or the property supplement should be directed to the appropriate state insurance regulator or the NAIC.

All data submitted to the aggregator is subject to the confidentiality and data protection provisions of TRIA and the Program Rules, as well as to section 552 of title 5, United States Code, including any exceptions thereunder. In accordance with the Paperwork Reduction Act, (44 U.S.C. 3501 *et seq.*), the information collected through the web portal has been approved by OMB under Control Number 1505–0257. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a valid OMB control number.

Dated: March 29, 2019.

Steven E. Seitz,

Director, Federal Insurance Office.

[FR Doc. 2019–06618 Filed 4–3–19; 8:45 am]

BILLING CODE 4810–25–P

[11] *See* 31 CFR 50.51(c).

[12] Specifications for submission of data using a .csv file will be provided to the insurer by the aggregator.

UNITED STATES INSTITUTE OF PEACE

Notice of Meeting

Agency: United States Institute of Peace.

Date/Time: Friday, April 12, 2019 (10:00 a.m.–12:30 p.m.)

Location: 2301 Constitution Avenue NW, Washington, DC 20037.

Status: Open Session—Portions may be closed pursuant to Subsection (c) of Section 552(b) of Title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Public Law 98–525.

Agenda: April 12, 2019 Board Meeting: Chairman's Report; Vice Chairman's Report; President's Report; Approval of Minutes of the October 19, 2018 Board of Directors Meeting; Reports from USIP Board Committees; Updates from the field; and Update on the Justice and Security Dialogue Program.

Contact: Nancy Lindborg, President: *nlindborg@usip.org.*

Dated: March 29, 2019.

Nancy Lindborg,

President.

[FR Doc. 2019–06579 Filed 4–3–19; 8:45 am]

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Part II

Securities and Exchange Commission

Public Company Accounting Oversight Board; Notice of Filing of Proposed Rules on Auditing Accounting Estimates, Including Fair Value Measurements, and Amendments to PCAOB Auditing Standards; Notice

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85434; File No. PCAOB–2019–02]

Public Company Accounting Oversight Board; Notice of Filing of Proposed Rules on Auditing Accounting Estimates, Including Fair Value Measurements, and Amendments to PCAOB Auditing Standards

March 28, 2019.

Pursuant to Section 107(b) of the Sarbanes-Oxley Act of 2002 (the ''Act'' or ''Sarbanes-Oxley Act''), notice is hereby given that on March 20, 2019, the Public Company Accounting Oversight Board (the ''Board'' or ''PCAOB'') filed with the Securities and Exchange Commission (the ''Commission'' or ''SEC'') the proposed rules described in Items I and II below, which items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the proposed rules from interested persons.

I. Board's Statement of the Terms of Substance of the Proposed Rules

On December 20, 2018, the Board adopted a new rule and amendments to auditing standards (collectively, the ''proposed rules''), under which the three existing standards related to auditing estimates, including fair value measurements, will be replaced with a single, updated standard. The text of the proposed rules appears in Exhibit A to the SEC Filing Form 19b–4 and is available on the Board's website at *https://pcaobus.org/Rulemaking/Pages/docket-043-auditing-accounting-estimates-fair-value-measurements.aspx* and at the Commission's Public Reference Room.

II. Board's Statement of the Purpose of, and Statutory Basis for, the Proposed Rules

In its filing with the Commission, the Board included statements concerning the purpose of, and basis for, the proposed rules and discussed any comments it received on the proposed rules. The text of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements. In addition, the Board is requesting that, pursuant to Section 103(a)(3)(C) of the Sarbanes-Oxley Act, the Commission approve the proposed rules for application to audits of emerging growth companies (''EGCs'').[1] The Board's request is set forth in section D.

A. Board's Statement of the Purpose of, and Statutory Basis for, the Proposed Rules

(a) Purpose

Summary

The Board has adopted amendments to its standards for auditing accounting estimates and fair value measurements, under which three existing standards will be replaced with a single, updated standard (''AS 2501 (Revised)'' or the ''new standard''). As discussed in more detail below, in the Board's view, the new standard and related amendments will further investor protection by strengthening audit requirements, applying a more uniform, risk-based approach to an area of the audit that is of increasing prevalence and significance, and updating the standards in light of recent developments.

The financial statements of most companies reflect amounts in accounts and disclosures that require estimation, which may include fair value measurements or other types of estimates. These estimates appear in items like revenues from contracts with customers, valuations of certain financial and non-financial assets, impairments of long-lived assets, allowances for credit losses, and contingent liabilities. As financial reporting frameworks evolve toward greater use of estimates, accounting estimates are becoming more prevalent and more significant, often having a significant impact on a company's reported financial position and results of operations.

By their nature, accounting estimates, including fair value measurements, generally involve subjective assumptions and measurement uncertainty, making them susceptible to management bias. Some estimates involve complex processes and methods. As a result, accounting estimates are often some of the areas of greatest risk in an audit, requiring additional audit attention and appropriate application of professional skepticism. The challenges of auditing estimates may be compounded by cognitive bias, which could lead auditors to anchor on management's estimates and inappropriately weight confirmatory over contradictory evidence.

The Board's oversight activities, which have revealed a recurring pattern of deficiencies in this area, also raise concerns about auditors' application of professional skepticism, including addressing potential management bias, in this area of the audit. Over the years, PCAOB staff has provided guidance for auditors related to auditing accounting estimates, but this area remains challenging and practices among firms vary.

Currently, three PCAOB auditing standards primarily relate to accounting estimates, including fair value measurements. These three standards, which were originally adopted between 1988 and 2003, include common approaches for substantive testing but vary in the level of detail in describing the auditor's responsibilities with respect to those approaches. In addition, because the three standards predate the Board's risk assessment standards, they do not fully integrate risk assessment requirements that relate to identifying, assessing, and responding to the risks of material misstatement in accounting estimates.

The new standard builds on the common approaches in the three existing standards and will strengthen PCAOB auditing standards in the following respects:

- Providing direction to prompt auditors to devote greater attention to addressing potential management bias in accounting estimates, as part of applying professional skepticism.
- Extending certain key requirements in the existing standard on auditing fair value measurements, the newest and most comprehensive of the three existing standards, to other accounting estimates in significant accounts and disclosures, reflecting a more uniform approach to substantive testing for estimates.
- More explicitly integrating requirements with the Board's risk assessment standards to focus auditors on estimates with greater risk of material misstatement.
- Making other updates to the requirements for auditing accounting estimates to provide additional clarity and specificity.
- Providing a special topics appendix to address certain aspects unique to auditing fair values of financial instruments, including the use of pricing information from third parties such as pricing services and brokers or dealers.

The Board has adopted the new standard and related amendments after substantial outreach, including two

[1] The term ''emerging growth company'' is defined in Section 3(a)(80) of the Securities Exchange Act of 1934 (the ''Exchange Act'') (15 U.S.C. 78c(a)(80)). *See also Inflation Adjustments and Other Technical Amendments Under Titles I and III of the JOBS Act,* Release No. 33–10332 (Mar. 31, 2017), 82 FR 17545 (Apr. 12, 2017).

rounds of public comment. Commenters generally supported the Board's objective of improving the quality of audits involving accounting estimates, and suggested areas where the proposed requirements could be modified or clarified. The Board has taken all of these comments, as well as observations from PCAOB oversight activities and the relevant academic literature, into account.

In a separate PCAOB release, the Board also adopted amendments to its standards for using the work of specialists, which are often involved in developing, or assisting in the evaluation of, accounting estimates.[2] Certain provisions of the new standard include references to AS 1210, *Using the Work of an Auditor-Engaged Specialist;* AS 1201, *Supervision of the Audit Engagement;* and AS 1105, *Audit Evidence,* as amended.

In its consideration of the new standard and related amendments, the Board is mindful of the significant advances in technology that have occurred in recent years, including increased use of data analysis tools and emerging technologies. An increased use of technology-based tools, together with future developments in the use of data and technology, could have a fundamental impact on the audit process. The Board is actively exploring these potential impacts through ongoing staff research and outreach.

In the context of this rulemaking, the Board considered how changes in technology could affect the processes companies use to develop accounting estimates, including fair value measurements, and the tools and techniques auditors apply to audit them. The Board believes that the new standard and related amendments are sufficiently principles-based and flexible to accommodate continued advances in the use of data and technology by both companies and auditors. The Board will continue to monitor advances in this area and any effect they may have on the application of the new standard.

The new standard and related amendments apply to all audits conducted under PCAOB standards. Subject to approval by the Commission, the new standard and related amendments will take effect for audits for fiscal years ending on or after December 15, 2020.

[2] *See Amendments to Auditing Standards for Auditor's Use of the Work of Specialists,* PCAOB Release No. 2018–006 (Dec. 20, 2018) (''Specialists Release'').

(b) Statutory Basis

The statutory basis for the proposed rules is Title I of the Act.

B. Board's Statement on Burden on Competition

Not applicable. The Board's consideration of the economic impacts of the proposed rules is discussed in section D below.

C. Board's Statement on Comments on the Proposed Rules Received From Members, Participants or Others

The Board released the proposed rules for public comment in *Proposed Auditing Standard—Auditing Accounting Estimates, Including Fair Value Measurements, and Proposed Amendments to PCAOB Auditing Standards,* PCAOB Release No. 2017–002 (June 1, 2017) (''proposal'' or ''Estimates Proposing Release''). The PCAOB also issued for public comment a Staff Consultation Paper, *Auditing Accounting Estimates and Fair Value Measurements* (Aug. 19, 2014) (''SCP''). Copies of Release No. 2017–002, the SCP, and the comment letters received in response to the PCAOB's requests for comment are available on the PCAOB's website at *https:/pcaobus.org/Rulemaking/Pages/docket-043-auditing-accounting-estimates-fair-value-measurements.aspx.* The PCAOB received 81 written comment letters. The Board's response to the comments received and the changes made to the rules in response to the comments received are discussed below.

Background

Accounting estimates are an essential part of financial statements. Most companies' financial statements reflect accounts or amounts in disclosures that require estimation. Accounting estimates are pervasive to financial statements, often substantially affecting a company's financial position and results of operations. Examples of accounting estimates include certain revenues from contracts with customers, valuations of financial and non-financial assets, impairments of long-lived assets, allowances for credit losses, and contingent liabilities.

The evolution of financial reporting frameworks toward greater use of estimates includes expanded use of fair value measurements that need to be estimated. For purposes of this rulemaking, a fair value measurement is considered a form of accounting estimate because it generally shares many of the same characteristics with other estimates, including subjective assumptions and measurement uncertainty.

Rulemaking History

The PCAOB has engaged in extensive outreach to explore the views of market participants and others on the potential for improvement of the auditing standards related to accounting estimates. This includes discussions with the Board's Standing Advisory Group (''SAG'') and the Pricing Sources Task Force. In addition, in August 2014, the PCAOB issued the SCP, to solicit comments on various issues, including the potential need for standard setting and key aspects of a potential new standard and related requirements.

In June 2017, the Board proposed to replace three auditing standards that primarily relate to accounting estimates, including fair value measurements, with a single standard. The proposal included a special topics appendix addressing certain matters relevant to auditing the fair value of financial instruments and amendments to several PCAOB standards to align them with the single standard. A number of commenters across many affiliations supported the Board's efforts to strengthen auditing practices and update its standards in this area.

In addition to this outreach, the Board's approach has been informed by, among other things, observations from PCAOB oversight activities and SEC enforcement actions and consideration of academic research, the standard on auditing accounting estimates recently adopted by the International Auditing and Assurance Standards Board (''IAASB''), and the extant standard on auditing accounting estimates of the Auditing Standards Board (''ASB'') of the American Institute of Certified Public Accountants.

Overview of Existing Requirements

The primary PCAOB standards that apply specifically to auditing accounting estimates, including fair value measurements are:

- AS 2501, *Auditing Accounting Estimates* (originally issued in April 1988) (''accounting estimates standard'')—applies to auditing accounting estimates in general.
- AS 2502, *Auditing Fair Value Measurements and Disclosures* (originally issued in January 2003) (''fair value standard'')—applies to auditing the measurement and disclosure of assets, liabilities, and specific components of equity presented or disclosed at fair value in financial statements.
- AS 2503, *Auditing Derivative Instruments, Hedging Activities, and Investments in Securities* (originally issued in September 2000) (''derivatives

standard'')—applies to auditing financial statement assertions for derivative instruments, hedging activities, and investments in securities. Its scope includes requirements for auditing the valuation of derivative instruments and securities, including those measured at fair value.

The accounting estimates standard, fair value standard, and derivatives standard are referred to collectively as the ''estimates standards.''

In addition, the Board's risk assessment standards,[3] which set forth requirements for the auditor's assessment of and response to risk in an audit, include requirements that relate to accounting estimates. These requirements involve procedures regarding identifying and assessing risks of material misstatement in accounting estimates,[4] identifying and evaluating misstatements in accounting estimates,[5] and evaluating potential management bias associated with accounting estimates.[6] PCAOB standards also set forth requirements for the auditor to plan and perform his or her work with due professional care, which includes the application of professional skepticism.[7]

Both the accounting estimates standard and the fair value standard provide that the auditor may apply one or a combination of three approaches to substantively test an accounting estimate:

- *Testing management's process.* This generally involves:
- Evaluating the reasonableness of assumptions used by management that are significant to the estimate, and testing and evaluating the completeness, accuracy, and relevance of data used; [8] and
- Evaluating the consistency of management's assumptions with other information.[9]
- *Developing an independent estimate.* This generally involves using management's assumptions, or alternative assumptions, to develop an independent estimate or an expectation of an estimate.[10]
- *Reviewing subsequent events or transactions.* This generally involves using events or transactions occurring subsequent to the balance sheet date, but prior to the date of the auditor's report, to provide evidence about the reasonableness of the estimate.[11]

In general, the fair value standard, which is the most recent of the estimates standards, sets forth more detailed procedures for the common approaches described above. The level of detail within the fair value standard, however, varies.[12] For example, the fair value standard sets forth a number of different requirements for testing management's process but only a few general requirements for developing an independent estimate.[13]

The derivatives standard primarily addresses auditing derivatives. This standard also includes requirements for auditing the valuation of derivatives and investment securities, including valuations based on an investee's financial results, and testing assertions about securities based on management's intent and ability.[14]

Existing Practice

The PCAOB's understanding of audit practice at both larger and smaller audit firms under existing PCAOB standards has been informed by, among other things, the collective experience of PCAOB staff, observations from oversight activities of the Board, enforcement actions of the SEC, comments received on the SCP and proposal, and discussions with the SAG and audit firms.

Overview of Existing Practice

The PCAOB has observed through its oversight activities that some audit firms' policies, procedures, and guidance (''methodologies'') use approaches that apply certain of the basic procedures for auditing fair value measurements to other accounting estimates (*e.g.,* evaluating the method used by management to develop estimates).[15] The PCAOB has also observed that when testing management's process, some auditors have developed expectations of certain significant assumptions as an additional consideration in evaluating the reasonableness of those assumptions.

Over the past few years, some audit firms have updated their methodologies, often in response to identified inspection deficiencies. For example, in the area of auditing the fair value of financial instruments, some firms have directed resources to implement more rigorous procedures to evaluate the process used by third-party pricing sources to determine the fair value of financial instruments.

The PCAOB has observed diversity in how audit firms use information obtained from third-party sources in auditing fair value measurements. Such third-party sources include pricing services and brokers or dealers, which provide pricing information related to the fair value of financial instruments.[16]

Some larger audit firms have implemented centralized approaches to developing independent estimates of the fair value of financial instruments. These firms may use centralized, national-level pricing desks or groups to assist in performing procedures relating to testing the fair value of financial instruments. The level of information provided by these centralized groups to engagement teams varies. In some cases, the national-level pricing desk obtains pricing information from pricing services at the request of the engagement team. Additionally, national-level pricing desks may periodically provide information about a pricing service's controls and methodologies, and provide information on current market conditions for different types of securities to inform an engagement team's risk assessment. In other cases, the national-level pricing desk itself may develop estimates of fair value for certain types of securities, assist audit teams with evaluating the specific methods and assumptions related to a particular instrument, or evaluate differences between a company's price and price from a pricing source. Smaller audit firms that do not have a national pricing group may engage valuation specialists to perform some or all of these functions. Some smaller firms use a combination of external valuation specialists and internal pricing groups.

Commenters generally did not disagree with the description of current practice in the proposal. A few commenters pointed to additional areas where company and firm size and available resources can result in diverse audit approaches (*e.g.,* impairment testing, estimates of environmental

[3] The Board's ''risk assessment standards'' include AS 1101, *Audit Risk;* AS 1105; AS 1201; AS 2101, *Audit Planning;* AS 2105, *Consideration of Materiality in Planning and Performing an Audit;* AS 2110, *Identifying and Assessing Risks of Material Misstatement;* AS 2301, *The Auditor's Responses to the Risks of Material Misstatement;* and AS 2810, *Evaluating Audit Results.*

[4] *See generally* AS 2110.13.

[5] *See* AS 2810.13.

[6] *See* AS 2810.27.

[7] *See generally* paragraph .07 of AS 1015, *Due Professional Care in the Performance of Work.*

[8] *See generally* AS 2501 and AS 2502.26–.39.

[9] *Id.*

[10] *See generally* AS 2501.12 and AS 2502.40.

[11] *See generally* AS 2501.13 and AS 2502.41–.42.

[12] *See generally* AS 2502.26–.40.

[13] *See generally* AS 2502.40.

[14] *See generally* AS 2503.28–.34 and .56–.57.

[15] Notably, most of those firms base their methodologies largely on the standards of the IAASB or the ASB, both of which have adopted one standard for auditing both fair value measurements and other accounting estimates.

[16] Another type of third-party source—specialists who develop independent estimates or assist in evaluating a company's estimate or the work of a company's specialist—is addressed separately in the Specialists Release. *See supra* note 2.

liabilities, and obtaining evidence related to complex transactions).

Observations From Audit Inspections

Through its oversight activities, the PCAOB has historically observed numerous deficiencies in auditing accounting estimates. Audit deficiencies have been observed in both larger and smaller audit firms.[17]

PCAOB inspections staff has observed audit deficiencies in issuer audits related to a variety of accounting estimates, including revenue-related estimates and reserves, the allowance for loan losses, the fair value of financial instruments, the valuation of assets and liabilities acquired in a business combination, goodwill and long-lived asset impairments, inventory valuation allowances, and equity-related transactions. Examples of such deficiencies include failures to (1) sufficiently test the accuracy and completeness of company data used in fair value measurements or other estimates, (2) evaluate the reasonableness of significant assumptions used by management, and (3) understand information provided by third-party pricing sources. In audits of brokers or dealers, deficiencies include failures to (1) obtain an understanding of the methods and assumptions internally developed or obtained by third parties that were used by the broker or dealer to determine fair value of securities, and (2) perform sufficient procedures to test valuation of securities. The observed deficiencies are frequently associated with, among other things, a failure to appropriately apply professional skepticism in auditing the estimates.[18]

More recently, there are some indications in PCAOB inspections of issuer audits that observed deficiencies in this area are decreasing, as compared to earlier years. Some audit firms have updated their audit practices in light of deficiencies identified through inspections. Not all firms have improved their practices in this area, however, and PCAOB inspections staff has continued to observe deficiencies similar to those described above. Inspection observations continue to raise concerns about auditors' application of professional skepticism, including addressing potential management bias, in auditing accounting estimates.

Observations From Enforcement Cases

Over the years, there have been a number of enforcement actions by the PCAOB and SEC for violations of PCAOB standards in auditing accounting estimates, demonstrating the importance of this aspect of the audit. Enforcement actions have been brought against larger and smaller firms, with domestic and international practices.

PCAOB enforcement cases related to auditing estimates have generally involved one or more of the following violations (1) failure to perform any procedures to determine the reasonableness of significant assumptions; (2) failure to test the relevance, sufficiency, and reliability of the data supporting the accounting estimates; (3) failure to perform a retrospective review of a significant accounting estimate to determine whether management's judgments and assumptions relating to the estimate indicated a possible bias; and (4) failure to adequately consider contradictory evidence or perform procedures to obtain corroboration for management representations regarding accounting estimates.[19]

Similarly, the SEC has brought Rule 102(e) proceedings against auditors for substantive failures in auditing accounting estimates, including failures to obtain sufficient appropriate audit evidence for significant accounting estimates in an entity's financial statements and failures to exercise due professional care, including professional skepticism, throughout the audit.[20] In some cases, the auditor (1) obtained little, if any, reliable or persuasive evidence with respect to management's adjustments to stale appraised values; (2) failed to identify and address bias in management's estimates; or (3) failed to evaluate the results of audit procedures performed, including whether the evidence obtained supported or contradicted estimates in the financial statements.[21]

Reasons To Improve Auditing Standards

The Board believes that its standards for auditing accounting estimates, including fair value measurements, can be improved to provide better direction to auditors with respect to both the application of professional skepticism, including addressing potential management bias, and the use of third-party pricing information.

First, the differences in requirements among the three estimates standards suggest that revising PCAOB standards to set forth a more uniform, risk-based approach to auditing estimates can lead to improvements in auditing practices for responding to the risks of material misstatement in accounting estimates, whether due to error or fraud.

Second, because the subjective assumptions and measurement uncertainty of accounting estimates make them susceptible to management bias, the Board believes that PCAOB standards related to auditing accounting estimates will be improved by emphasizing the application of professional skepticism, including addressing potential management bias.

[17] *See, e.g., Annual Report on the Interim Inspection Program Related to Audits of Brokers and Dealers,* PCAOB Release No. 2018–003 (Aug. 20, 2018); *PCAOB Staff Inspection Brief, Preview of Observations from 2016 Inspections of Auditors of Issuers* (Nov. 2017); and *Annual Report on the Interim Inspection Program Related to Audits of Brokers and Dealers,* PCAOB Release No. 2017–004 (Aug. 18, 2017). *See also* Estimates Proposing Release at 12, footnote 39.

[18] Audit deficiencies have also been observed by other regulators internationally. For example, an International Forum of Independent Audit Regulators (''IFIAR'') survey released in 2018 reported that accounting estimates was one of the audit areas with the highest rate and greatest number of findings. The most commonly observed deficiencies related to failures to assess the reasonableness of assumptions, including consideration of contrary or inconsistent evidence where applicable; sufficiently test the accuracy of data used; perform sufficient risk assessment procedures; take relevant variables into account; evaluate how management considered alternative assumptions; and adequately consider indicators of bias. *See* IFIAR, *Report on 2017 Survey of Inspection Findings* (Mar. 9, 2018), at 10 and B–6.

[19] *See, e.g., Deloitte & Touche LLP,* PCAOB Release No. 105–2018–008 (May 23, 2018); *Tarvaran Askelson & Company, LLP, Eric Askelson, and Patrick Tarvaran,* PCAOB Release No. 105–2018–001 (Feb. 27, 2018); *David M. Burns, CPA,* PCAOB Release No. 105–2017–055 (Dec. 19, 2017); *Grant Thornton LLP,* PCAOB Release No. 105–2017–054 (Dec. 19, 2017); *Anthony Kam & Associates Limited, and Anthony KAM Hau Choi, CPA,* PCAOB Release No. 105–2017–043 (Corrected Copy) (Nov. 28, 2017); *BDO Auditores, S.L.P., Santiago Sañé Figueras, and José Ignacio Algás Fernández,* PCAOB Release No. 105–2017–039 (Sept. 26, 2017); *Kyle L. Tingle, CPA, LLC and Kyle L. Tingle, CPA,* PCAOB Release No. 105–2017–027 (May 24, 2017); *Wander Rodrigues Teles,* PCAOB Release No. 105–2017–007 (Mar. 20, 2017); *KAP Purwantono, Sungkoro & Surja, Roy Iman Wirahardja, and James Randall Leali,* PCAOB Release No. 105–2017–002 (Feb. 9, 2017); *HJ & Associates, LLC, S. Jeffrey Jones, CPA, Robert M. Jensen, CPA, and Charles D. Roe, CPA,* PCAOB Release No. 105–2017–001 (Jan. 24, 2017); *Arshak Davtyan, Inc. and Arshak Davtyan, CPA,* PCAOB Release No. 105–2016–053 (Dec. 20, 2016); *David C. Lee, CPA,* PCAOB Release No. 105–2016–052 (Dec. 20, 2016); *Arturo Vargas Arellano, CPC,* PCAOB Release No. 105–2016–045 (Dec. 5, 2016); and *Goldman Kurland and Mohidin, LLP and Ahmed Mohidin, CPA,* PCAOB Release No. 105–2016–027 (Sept. 13, 2016). *See also* Estimates Proposing Release at 13, footnote 41.

[20] *See, e.g., Paritz & Company, P.A., Lester S. Albert, CPA, and Brian A. Serotta, CPA,* SEC Accounting and Auditing Enforcement Release (''AAER'') No. 3899 (Sept. 21, 2017); *KPMG LLP and John Riordan, CPA,* SEC AAER No. 3888 (Aug. 15, 2017); *William Joseph Kouser Jr., CPA, and Ryan James Dougherty, CPA,* AAER No. 3864 (Apr. 4, 2017); *Grassi & Co., CPAs, P.C.,* SEC AAER No. 3826 (Nov. 21, 2016). *See also* Estimates Proposing Release at 14, footnote 42.

[21] *See, e.g., Miller Energy Resources, Inc., Paul W. Boyd, CPA, David M. Hall, and Carlton W. Vogt, III, CPA,* SEC AAER Nos. 3780 (June 7, 2016) and 3673 (Aug. 6, 2015); *Grant Thornton, LLP,* SEC AAER No. 3718 (Dec. 2, 2015).

Although the risk assessment standards and certain other PCAOB standards address professional skepticism and management bias, the estimates standards provide little or no specific direction on how to address those topics in the context of auditing accounting estimates.

Third, existing requirements do not provide specific direction about how to evaluate the relevance and reliability of pricing information from third parties. PCAOB standards should be improved by revising the requirements in this area to drive a level of work effort commensurate with both the risks of material misstatement in the valuation of financial instruments and the relevance and reliability of the evidence obtained.

The Board received 38 comment letters on the proposal. A number of commenters supported the Board's efforts to strengthen auditing practices and update its standards related to estimates and fair value measurements. For example, investor groups asserted that the proposal will strengthen auditor responsibilities, improve audit quality, and further investor protection. Other commenters pointed to better integration and alignment with the risk assessment standards, noting, for example, that a risk-based approach to auditing estimates will help to resolve the differences in requirements among the current standards. Some commenters supported combining the three existing standards into a single standard, for example, because it would make the requirements easier to navigate and comply with. Some commenters also expressed support for the incremental direction in the proposal on matters related to financial instruments, including the use of pricing information from third parties as audit evidence.

Some commenters on the proposal challenged the relevance of inspection experience to the Board's consideration of the new standard. For example, two commenters questioned whether the existence of audit deficiencies related to estimates warrant revision to the estimates standards. Another commenter suggested that development of standards should be based on areas where audit quality can be improved in order to protect the public interest, not just through areas that have been identified during the inspection process. In contrast, other commenters expressed concern over continued audit deficiencies observed in this area and supported the development of the proposal. Another commenter argued that a lack of clarity in the estimates standards might be a contributing factor to the persistence of audit deficiencies associated with auditing estimates and fair value measurements.

The Board believes that a pattern of deficiencies over time raises questions about whether professional skepticism is being appropriately applied and about overall audit quality in this area, and supports the view that estimates are a challenging area of the audit. More specific direction should contribute to more consistent, risk-based execution and improved audit quality.

Some commenters questioned the need for the proposal citing, among other things, insufficient evidence that existing standards are deficient and the loss of certain content from the estimates standards that the commenters considered to be useful. One commenter argued that the standards for fair value measurements should be differentiated from the standards for other accounting estimates because the goals of the standards are fundamentally different.

The Board believes it is appropriate to apply a more uniform approach to the audit of accounting estimates, including fair value measurements, including by bringing the requirements together into a single standard. The estimates standards already reflect common approaches to substantive testing. While the level of detail varies across the three standards, these differences do not derive from differences in the assessed risks of material misstatement. The Board believes that a single standard will promote auditor performance that is more consistently responsive to risk. The new standard also includes an appendix on valuation of financial instruments that provides specific direction in that area.

Some commenters asserted that the proposal would lead to unnecessary expansion of procedures and thus increased costs. For example, one of those commenters contended that the proposed requirements could affect the ability of smaller accounting firms to audit certain types of issuers. Another commenter cautioned against a one-size-fits-all audit approach, expressing concern about expecting the same level of rigor in developing accounting estimates from both the largest and smallest public companies. One commenter challenged the scalability of the proposal, arguing that auditors will assume that all listed factors and considerations will have to be addressed in every audit, and that nothing in the proposal directed the auditor to consider cost-benefit implications or whether further testing and analysis would meaningfully improve the auditor's ability to assess the reasonableness of an estimate. Other commenters, however, asserted that the standard is sufficiently scalable.

The Board believes that the new standard is well-tailored to address an increasingly significant and challenging area of the audit. The new standard is designed to be scalable because the necessary audit evidence depends on the corresponding risks of material misstatement. The new standard does not prescribe detailed procedures or the extent of procedures, beyond the requirement to respond to risk, including significant risk, and direction for applying the primary approaches to testing. Rather, it builds on the existing requirements of AS 2301 under which the auditor designs procedures that take into account the types of potential misstatements that could result from the identified risks and the likelihood and magnitude of potential misstatement.[22] Specific risk factors associated with the estimates—for example, subjective assumptions, measurement uncertainty, or complex processes or methods[23]—affect the auditor's risk assessment and in turn, the required audit effort.

Aligning the new standard and related amendments with the risk assessment standards directs auditors to focus on estimates with greater risk of material misstatement. The new standard allows auditors to tailor their approach to best respond to identified risks and effectively obtain sufficient appropriate evidence. To the extent the new standard results in increased audit effort, that effort should be scaled in relation to the relevant risks, and any associated costs should be justified in light of the benefits of appropriate audit attention and the appropriate application of professional skepticism.

Some commenters also challenged the anticipated benefits of the proposal, arguing that additional audit work would not improve the quality of financial reporting, given the inherent uncertainty and subjectivity surrounding estimates.

The new standard and related amendments acknowledge that estimates have estimation uncertainty and that it affects the risks of material misstatement. Neither the Board nor auditors are responsible for placing limits on the range of estimation uncertainty. That uncertainty is a function of the estimate's measurement requirements under the applicable financial reporting framework, the economic phenomena affecting that estimate, and the fact that it involves assessments of future outcomes. Under

[22] AS 2301.09.

[23] *See* paragraph AS 2110.60A, as amended, for examples of specific risk factors.

the new standard and related amendments, the auditor will consider estimation uncertainty in assessing risk and performing procedures in response to risk, which involves evaluating whether the accounting estimates are reasonable in the circumstances and in conformity with the applicable financial reporting framework, as well as evaluating potential management bias in accounting estimates, and its effect on the financial statements. These responsibilities align with the auditor's overall responsibility for planning and performing financial statement audits.

Commenters generally acknowledged the Board's efforts to emphasize professional skepticism, including addressing management bias, in the proposal and provided varying views on related aspects of the proposal. Some commenters, for example, indicated that the proposal should place even more emphasis on the need to challenge management or the consideration of management bias, noting the existence of overly optimistic or skewed estimates in financial statements. One commenter advocated for more discussion within the standard of the various types of bias that can affect auditing estimates.

In contrast, other commenters asserted that the proposal overemphasized the need for professional skepticism, or had a negative tone that assumed a predisposition to management bias. One commenter pointed out other practices and requirements that, in the commenter's view, mitigate the risk of management bias, among them CEO and CFO certification, management reporting and auditor attestation on internal control over financial reporting, internal audit, and audit committee oversight. Some of these commenters expressed concern that the emphasis on professional skepticism would lead to unnecessary expansion of audit procedures.

A few commenters also argued that management bias is inherent in accounting estimates and cannot be eliminated. One of the commenters added that, for those reasons, the proposed requirements addressing management bias should not apply to estimates made pursuant to the new accounting standard on credit losses.[24] Another commenter suggested that the proposal should differentiate between limitations that an auditor can address (*e.g.,* analytical ability), those that can be partially addressed (*e.g.,* some features of management bias), and those that cannot be addressed (*e.g.,* time constraints, limits on available information).

The Board acknowledges that given the subjective assumptions and measurement uncertainty inherent in many estimates, bias cannot be eliminated entirely. However, a standard that reinforces the importance of professional skepticism, including addressing the potential for management bias, when auditing estimates will remind auditors of their existing responsibilities to evaluate contradictory evidence and to address the effects of bias on the financial statements.

Some commenters suggested that the standard include guidance on identifying and testing relevant controls over accounting estimates. For example, one commenter suggested guidance related to auditor consideration of management's controls over selection and supervision of a company specialist. Another commenter suggested additional guidance on identification and testing of relevant controls, and identification and response to risks of material misstatement due to fraud in relation to auditing estimates.

The auditor's responsibilities for testing controls are already addressed in AS 2110, AS 2301, and AS 2201, *An Audit of Internal Control Over Financial Reporting That Is Integrated with An Audit of Financial Statements.* These requirements apply to controls over accounting estimates. Those responsibilities are not altered by the new standard and related amendments. However, after considering the comments, an amendment was made to provide additional direction on testing controls related to auditing estimates.

Overview of Final Rules

The Board has adopted a single standard to replace the accounting estimates standard, the fair value standard, and the derivatives standard. As described in more detail below, AS 2501 (Revised) includes a special topics appendix that addresses certain matters relevant to auditing the fair value of financial instruments. In addition, several PCAOB auditing standards will be amended to align them with the new standard on auditing accounting estimates. The new standard and related amendments will make the following changes to existing requirements:

- Provide direction to prompt auditors to devote greater attention to addressing potential management bias in accounting estimates, as part of applying professional skepticism. In this regard, the new standard and related amendments will:
- Amend AS 2110 to require a discussion among the key engagement team members of how the financial statements could be manipulated through management bias in accounting estimates in significant accounts and disclosures.
- Emphasize certain key requirements to focus auditors on their obligations, when evaluating audit results, to exercise professional skepticism, including evaluating whether management bias exists.
- Remind auditors that audit evidence includes both information that supports and corroborates the company's assertions regarding the financial statements and information that contradicts such assertions.
- Require the auditor to identify significant assumptions used by the company and describe matters the auditor should take into account when identifying those assumptions.
- Provide examples of significant assumptions (important to the recognition or measurement of the accounting estimate), such as assumptions that are susceptible to manipulation or bias.
- Emphasize requirements for the auditor to evaluate whether the company has a reasonable basis for the significant assumptions used and, when applicable, for its selection of assumptions from a range of potential assumptions.
- Explicitly require the auditor, when developing an independent expectation of an accounting estimate, to have a reasonable basis for the assumptions and method he or she uses.
- Require that the auditor obtain an understanding of management's analysis of critical accounting estimates and take that understanding into account when evaluating the reasonableness of significant assumptions and potential management bias.
- Recast certain existing requirements using terminology that encourages maintaining a skeptical mindset, such as ''evaluate'' and ''compare'' instead of ''corroborate.''
- Strengthen requirements for evaluating whether data was appropriately used by a company that build on requirements in the fair value standard, and include a new requirement for evaluating whether a company's change in the source of data is appropriate.
- Clarify the auditor's responsibilities for evaluating data that build on the existing requirements in AS 1105.
- Amend AS 2401, *Consideration of Fraud in a Financial Statement Audit,*

[24] *See* Financial Accounting Standards Board (''FASB'') Accounting Standards Update No. 2016–13, *Financial Instruments—Credit Losses* (Topic 326): *Measurement of Credit Losses on Financial Instruments* (June 2016).

to clarify the auditor's responsibilities when performing a retrospective review of accounting estimates and align them with the requirements in the new standard.

• Extend certain key requirements in the fair value standard to other accounting estimates in significant accounts and disclosures to reflect a more uniform approach to substantive testing. For estimates not currently subject to the fair value standard, this will:

• Refine the three substantive approaches common to the accounting estimates standard to include more specificity, similar to the fair value standard.

• Describe the auditor's responsibilities for testing the individual elements of the company's process used to develop the estimate (*i.e.,* methods, data, and significant assumptions).

• Set forth express requirements for the auditor to evaluate the company's methods for developing the estimate, including whether the methods are:

• In conformity with the requirements of the applicable financial reporting framework; and

• Appropriate for the nature of the related account or disclosure, taking into account the auditor's understanding of the company and its environment.

• Require the auditor to take into account certain factors in determining whether significant assumptions that are based on the company's intent and ability to carry out a particular course of action are reasonable.

• Further integrate requirements with the risk assessment standards to focus auditors on estimates with greater risk of material misstatement. The new standard and related amendments incorporate specific requirements relating to accounting estimates into AS 2110 and AS 2301 to inform the necessary procedures for auditing accounting estimates. Specifically, the new standard and related amendments would:

• Amend AS 2110 to include risk factors specific to identifying significant accounts and disclosures involving accounting estimates.

• Align the scope of the new standard with AS 2110 to apply to accounting estimates in significant accounts and disclosures.

• Amend AS 2110 to set forth requirements for obtaining an understanding of the company's process for determining accounting estimates.

• Require auditors to respond to significantly differing risks of material misstatement in the components of accounting estimates, consistent with AS 2110.

• Remind auditors of their responsibility to evaluate conformity with the applicable financial reporting framework, reasonableness, and potential management bias and its effect on the financial statements when responding to the risks of material misstatement in accounting estimates in significant accounts and disclosures.

• Require the auditor, when identifying significant assumptions, to take into account the nature of the accounting estimate, including related risk factors, the applicable financial reporting framework, and the auditor's understanding of the company's process for developing the estimate.

• Include matters relevant to identifying and assessing risks of material misstatement related to the fair value of financial instruments.

• Add a note in AS 2301 to emphasize that performing substantive procedures for the relevant assertions of significant accounts and disclosures involves testing whether the significant accounts and disclosures are in conformity with the applicable financial reporting framework.

• Add a note to AS 2301 providing that for certain estimates involving complex models or processes, it might be impossible to design effective substantive tests that, by themselves, would provide sufficient appropriate evidence regarding the assertions.

• Make other updates to the requirements for auditing accounting estimates, including:

• Update the description of what constitutes an accounting estimate to encompass the general characteristics of the variety of accounting estimates, including fair value measurements, in financial statements.

• Set forth specific requirements for evaluating data and pricing information used by the company or the auditor that build on the existing requirements in AS 1105.

• Establish more specific requirements for developing an independent expectation that vary depending on the source of data, assumptions, or methods used by the auditor and build on AS 2810 to provide a requirement when developing an independent expectation as a range.

• Relocate requirements in the derivatives standard for obtaining audit evidence when the valuation of investments is based on investee results as an appendix to AS 1105.

• Provide specific requirements and direction to address auditing the fair value of financial instruments, including:

• Establish requirements to determine whether pricing information obtained from third parties, such as pricing services and brokers or dealers, provides sufficient appropriate evidence, including:

• Focus auditors on the relevance and reliability of pricing information from third-party sources,[25] regardless of whether the pricing information was obtained by the company or the auditor.

• Establish factors that affect relevance and reliability of pricing information obtained from a pricing service.

• Require the auditor to perform additional audit procedures to evaluate the process used by the pricing service when fair values are based on transactions of similar financial instruments.

• Require the auditor to perform additional procedures on pricing information obtained from a pricing service when no recent transactions have occurred for either the financial instrument being valued or similar financial instruments.

• Establish conditions under which less information is needed about particular methods and inputs of individual pricing services in circumstances where prices are obtained from multiple pricing services.

• Establish factors that affect the relevance and reliability of quotes from brokers or dealers.

• Require the auditor to understand, if applicable, how unobservable inputs were determined and evaluate the reasonableness of unobservable inputs.

The Board seeks to improve the quality of auditing in this area and believes these changes strengthen and enhance the requirements for auditing accounting estimates.

Commenters largely supported a single, more uniform standard to address auditing accounting estimates, including fair value measurements. For example, one commenter observed that the existence of three related standards in this area made it difficult for auditors to navigate to be certain that all requirements were met. A few commenters, however, asserted that fair value measurements and derivatives are unique and involve different functions. One of those commenters also expressed concern about applying audit procedures in the fair value standard to other accounting estimates. The new standard takes into account the unique

[25] The requirements in this area focus primarily on pricing information from pricing services and brokers or dealers, but also cover pricing information obtained from other third-party pricing sources, such as exchanges and publishers of exchange prices.

aspects of auditing fair value measurements, such as the use of observable and unobservable inputs. Further, the new standard includes a separate appendix that addresses auditing the fair value of financial instruments.

Some commenters requested supplemental or implementation guidance for various requirements presented in the proposed standard and the related amendments. Several commenters also advocated for retaining portions of the derivatives standard that, in their view, provided helpful guidance. Two commenters suggested that the Board consider issuing guidance specific to the audits of brokers and dealers.[26]

A few commenters observed that the proposal did not explicitly address how advances in technology, including use of data analytics, could affect audit procedures. In its consideration of the new standard and related amendments, the Board is mindful of the significant advances in technology that have occurred in recent years, including increased use of data analysis tools and emerging technologies. An increased use of these technology-based tools, together with future developments in the use of data and technology, could have a fundamental impact on the audit process. The Board is actively exploring these potential impacts through ongoing staff research and outreach.[27]

In the context of this rulemaking, the Board considered how changes in technology could affect the approaches to auditing accounting estimates. The Board believes that the new standard and related amendments are sufficiently principles-based and flexible to accommodate continued advances in the use of data and technology by both companies and auditors. The Board will continue to monitor advances in this area and any implications related to the standard.[28]

Some commenters advocated for greater alignment of the proposal with the IAASB's exposure draft on International Standard on Auditing 540 (''ISA 540'')[29] to achieve greater consistency in practice, and suggested continued coordination of efforts in this area. The Board considered the IAASB's ISA 540 project while developing the new standard. While there is some commonality between the new standard and ISA 540 Revised, the new standard is aligned with the Board's risk assessment standards and designed for audits of issuers and SEC-registered brokers and dealers.

Following is a discussion of significant comments received on the proposal along with revisions made by the Board after consideration of those comments and additional guidance on the implementation of the requirements of the new standard. The subsections also include a comparison of the final requirements with the analogous requirements of the following standards issued by the IAASB and the Auditing Standards Board (''ASB'') of the American Institute of Certified Public Accountants:

- ISA 540 Revised, adopted by the IAASB; and
- AU–C Section 540, *Auditing Accounting Estimates, Including Fair Value Accounting Estimates, and Related Disclosures* (''AU–C Section 540''), adopted by the ASB of the American Institute of Certified Public Accountants.

The comparison does not necessarily represent the views of the IAASB or ASB regarding the interpretation of their standards. Additionally, the information presented in the subsections does not include the application and explanatory material in the IAASB standards or ASB standards.[30]

AS 2501 (Revised)

Scope of the Standard

See Paragraphs .01–.02

As in the proposal, the new standard applies when auditing accounting estimates in significant accounts and disclosures. Commenters on this topic supported the scope set forth in the standard.

Comparison With Standards of Other Standard Setters

The scope and nature of accounting estimates described in ISA 540 Revised, AU–C Section 540, and the new standard share some common concepts. However, the accounting estimates covered by the new standard are expressly linked to significant accounts and disclosures.

Objective of the Standard

See Paragraph .03

In the proposal, the standard included a detailed objective expressly addressing the fundamental aspects of auditing accounting estimates under the estimates standards: Testing and evaluating whether accounting estimates (1) are reasonable in the circumstances, (2) have been accounted for and disclosed in conformity with the applicable financial reporting framework, and (3) are free from bias that results in material misstatement.

Commenters asserted that including the phrase ''free from bias that results in material misstatement'' as a distinct element of the audit objective was not clear, could imply absolute assurance, or could be interpreted as a broader obligation than what is required under the existing standards. Some commenters recommended deleting the reference to bias from the objective, and others suggested revisions in order to clarify the intent of including the reference to bias in the objective. One commenter suggested that the objective should be for auditors to determine whether accounting estimates and disclosures are reasonable in the context of the applicable financial reporting framework, which in the commenter's view would be broader than the proposed objective.

After consideration of comments, the Board has (1) revised the objective to describe the overall purpose of the procedures required under the new standard and other relevant procedures under the risk assessment standards (specifically, to determine whether accounting estimates in significant accounts and disclosures are properly accounted for and disclosed in financial statements);[31] (2) relocated the description of more specific auditor responsibilities—evaluating conformity with the applicable financial reporting framework, reasonableness, and potential management bias—from the

[26] *See* below for further discussion of the comments received on specific requirements and additional guidance on the implementation of the requirements in the new standard.

[27] For example, the staff is currently researching the effects on the audit of, among other things, data analytics, artificial intelligence, and distributed ledger technology, assisted by a task force of the SAG. *See* Data and Technology Task Force overview page, available on the Board's website.

[28] *See* PCAOB, *Changes in Use of Data and Technology in the Conduct of Audits, available at https://pcaobus.org/Standards/research-standard-setting-projects/Pages/technology.aspx.*

[29] *See* IAASB Exposure Draft, Proposed ISA 540 (Revised), *Auditing Accounting Estimates and Related Disclosures,* (Apr. 20, 2017). In October 2018, the IAASB released the final standard (''ISA 540 Revised'').

[30] Paragraph A59 of ISA 200, *Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with International Standards on Auditing,* and paragraph .A64 of AU–C Section 200, *Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with Generally Accepted Auditing Standards,* indicate that the related application and other explanatory material ''does not in itself impose a requirement'' but ''is relevant to the proper application of the requirements'' of the respective standards.

[31] This approach to formulating an objective is similar to the approach in other PCAOB standards. *See, e.g.,* paragraph .02 of AS 2410, *Related Parties.*

objective to the requirements;[32] and (3) provided additional context in the requirements to enhance clarity, including citing corresponding requirements in other PCAOB standards. In addition, for conciseness, the new standard and amendments have been revised to consistently use the phrase ''sufficient appropriate evidence,'' which has the same meaning in PCAOB standards as the phrase ''sufficient appropriate audit evidence.''

As discussed in more detail below, the revised objective links more closely with the requirements of the risk assessment standards[33] and continues to focus auditors on their existing obligations to evaluate potential management bias in the context of auditing accounting estimates.

Comparison With Standards of Other Standard Setters

The objective of ISA 540 Revised is to obtain sufficient appropriate audit evidence about whether accounting estimates and related disclosures in the financial statements are reasonable in the context of the applicable financial reporting framework. The objective of AU–C Section 540 is substantially the same but also includes whether related disclosures in the financial statements are adequate.

Identifying and Assessing Risks of Material Misstatement

See Paragraph .04

The proposed standard discussed how the auditor's responsibilities regarding the process of identifying and assessing risks of material misstatement, as set forth in AS 2110 apply to auditing accounting estimates. The proposed requirement provided that, among other things, identifying and assessing risks of material misstatement related to accounting estimates includes determining whether the components of estimates in significant accounts and disclosures are subject to significantly differing risks, and which estimates are associated with significant risks.[34]

One commenter asserted that the term ''components'' should be defined and another commenter observed that ''components of estimates'' could be interpreted to mean inputs used to develop the estimate, or individual accounts that roll up into a financial statement line item.

AS 2501 (Revised) retains paragraph .04 as proposed, including the reference to components of estimates. This reference is not new and derives from the concept in the risk assessment standards that components of a potential significant account or disclosure might be subject to significantly differing risks[35] which would need to be taken into account in designing and performing audit procedures. For example, a valuation allowance in the company's financial statements may include a general component and a specific component with differing risks.

Comparison With Standards of Other Standard Setters

In identifying and assessing the risks of material misstatement, ISA 540 Revised requires the auditor to separately assess inherent risk and control risk. The auditor is required to take into account, in assessing inherent risk (a) the degree to which the accounting estimate is subject to estimation uncertainty, and (b) the degree to which (i) the selection and application of the method, assumptions and data in making the accounting estimate; or (ii) the selection of management's point estimate and related disclosures for inclusion in the financial statements, are affected by complexity, subjectivity, or other inherent risk factors.[36]

AU–C Section 540 requires the auditor to evaluate the degree of estimation uncertainty associated with an accounting estimate in identifying and assessing the risks of material misstatement.

Responding to the Risks of Material Misstatement

See Paragraphs .05–.07

The proposed standard explained how the basic requirement in AS 2301 to respond to the risks of material misstatement applies when performing substantive procedures for accounting estimates in significant accounts and disclosures. Additionally, the proposal provided that responding to risks of material misstatement in the context of accounting estimates involves, among other things, (1) testing whether estimates in significant accounts and disclosures are in conformity with the applicable financial reporting framework, (2) responding to significantly differing risks of material misstatement in the components of an accounting estimate, and (3) applying professional skepticism in gathering and evaluating audit evidence, particularly when responding to fraud risks. The proposed standard also reminded auditors that, as the assessed risk of material misstatement increases, the evidence that the auditor should obtain also increases. The evidence provided by substantive procedures depends on the mix of the nature, timing, and extent of those procedures.

Commenters provided views on various aspects of the proposed requirements. One commenter asked for clarification on the role of professional skepticism in relation to fraud risks and management bias. Another commenter advocated for a framework against which auditor skepticism can be evaluated. Other commenters suggested including requirements to evaluate both corroborative and contradictory audit evidence similar to AS 1105.02. A few commenters also requested clarification of how substantive procedures related to accounting estimates can be performed at an interim date.

The new standard retains the discussion of the auditor's responsibilities for responding to risks associated with estimates substantially as proposed. The statements in the new standard related to responding to the risks of material misstatement are rooted in the Board's risk assessment standards and drew no critical comments.

The new standard reflects two changes from the proposal. As noted above, the description of more specific auditor responsibilities—evaluating conformity with the applicable accounting framework, reasonableness, and potential management bias—has been relocated from the objective to paragraph .05 to provide additional context for responding to risks of material misstatement. Specifically, the new standard states that responding to risks of material misstatement involves evaluating whether the accounting estimates are in conformity with the applicable financial reporting framework and reasonable in the circumstances, as well as evaluating potential management bias in accounting estimates and its effect on the financial statements. Notably, the added language regarding potential management bias is aligned with paragraphs AS 2810.24–.27 to remind auditors of existing requirements.

Additionally, the new standard now includes a reference to AS 1105.02, as suggested by some commenters, reminding auditors that audit evidence consists of both information that

[32] *See* first note to paragraph .05 of the new standard.

[33] *See supra* note 3. The risk assessment standards set forth requirements relating to the auditor's assessment of, and response to, the risks of material misstatement in the financial statements.

[34] *See* AS 2110.70–.71.

[35] *See* AS 2110.63.

[36] ISA 540 Revised and AU–C Section 540 also include requirements related to identification of significant risks related to accounting estimates. AS 2110 sets forth requirements for identifying significant risks under PCAOB standards.

supports and corroborates management's assertions regarding the financial statements and information that contradicts such assertions.

With respect to the comments regarding guidance on professional skepticism and performing procedures at interim dates, other PCAOB standards already address the auditor's responsibilities in those areas, and the new standard does not change that direction with respect to auditing estimates. For example, paragraphs .07–.09 of AS 1015, *Due Professional Care in the Performance of Work,* paragraph .13 of AS 2401, and AS 2301.07 address the appropriate application of professional skepticism, and AS 2301.43–.46 discusses the auditor's responsibilities when performing substantive procedures at an interim date. Those standards apply when auditing accounting estimates.

Scalability of the Standard

In response to questions in the proposal, commenters expressed mixed views on the scalability of the proposed requirements. Some commenters indicated that the proposed requirements were sufficiently scalable, while others identified challenges in scaling the auditor's response to identified risks in accounting estimates and requested additional guidance. For example, some commenters opined that it was not clear how auditors would tailor their response to an estimate that represented a significant risk of material misstatement compared with a lower risk estimate. One commenter advocated for further guidance to address situations where an estimate is deemed to have a low inherent risk. Another commenter indicated that it is important to recognize that the amount of evidence may not necessarily increase, but the persuasiveness and sufficiency of the evidence should increase.

The new standard is designed to be scalable because the necessary audit evidence depends on the corresponding risk of material misstatement. The standard does not prescribe detailed procedures or the extent of procedures, beyond the requirement to respond to the risk, including significant risk, and the direction for applying the primary approaches for testing. Rather, it builds on the requirements of AS 2301 to design procedures that take into account the types of potential misstatements that could result from the identified risks and the likelihood and magnitude of potential misstatement.[37] Specific risk factors associated with the estimates—for example, subjective assumptions, measurement uncertainty, or complex processes or methods [38]—would affect the auditor's risk assessment and in turn, the required audit effort. For example:

- Testing a simple calculation of depreciation expense, including evaluating remaining useful lives, for a group of assets of the same type with similar usage and condition would generally require less audit effort than testing asset retirement obligations that involve significant assumptions about costs not yet incurred based on estimation of the probability of future events.
- In testing the valuation of assets acquired and liabilities assumed in a business combination, more audit effort would need to be directed to assets and liabilities whose valuation involves more subjective assumptions, such as identifiable intangible assets and contingent consideration, than to assets with readily determinable values.

Additionally, the new standard echoes language from AS 2301.37 in stating that, as the assessed risk of material misstatement increases, the evidence from substantive procedures that the auditor should obtain also increases. Consistent with AS 2301, for an individual accounting estimate, different combinations of the nature, timing, and extent of testing might provide sufficient appropriate evidence to respond to the assessed risk of material misstatement for the relevant assertion.

Selection of Approaches

The proposed standard retained the requirement to test accounting estimates using one or a combination of three basic approaches from the estimates standards: (1) Testing the company's process, (2) developing an independent expectation, and (3) evaluating audit evidence from events or transactions occurring after the measurement date. The proposed standard also included a note reminding auditors that their understanding of the process the company used to develop the estimate, along with results of tests of relevant controls, should inform the auditor's decisions about the approach he or she takes to auditing an estimate.

Several commenters expressed support for retaining the three common approaches, as set forth in the proposal. Other commenters indicated that the proposal should emphasize that testing the company's process may not always be the best audit approach; with one commenter noting that the proposed requirement may lead auditors to test management's process substantively, regardless of whether another approach will provide the same or more persuasive audit evidence. Two commenters stressed the importance of developing an independent expectation and suggested this approach be selected in addition to testing the company's process. None of these commenters, however, suggested that the selection of substantive approaches should be limited.

Some commenters sought further direction on how the auditor would obtain sufficient evidence when using a combination of approaches, with some commenters asserting that, for example, the proposed requirement might result in inconsistent application or auditors unnecessarily performing all procedures under each approach. One commenter asked the Board to clarify whether documentation of a specific testing approach is expected.

Some commenters also requested guidance on the application of specific testing approaches. For instance, one commenter suggested that the Board consider directing auditors to always evaluate audit evidence from events or transactions occurring after the measurement date related to the accounting estimate, as, in their view, there would be limited circumstances in which this approach would not provide appropriate audit evidence to determine whether accounting estimates are reasonable. Another commenter added that events occurring after the measurement date may effectively eliminate estimation uncertainty, which affects risk assessment and the audit response related to valuation. This commenter suggested the proposal clarify the extent of additional procedures required, if any, when such events are considered and tested.

One commenter suggested more guidance be provided about how an auditor's understanding of management's process affects the auditor's planned response to assessed risk in accordance with AS 2301. This commenter also observed that the note to paragraph .07 may be read to mean that relevant controls are expected to be tested in all audits and suggested a footnote reference to relevant requirements of AS 2301.

The new standard retains the requirements for testing accounting estimates substantially as proposed, allowing the auditor to determine the approach or combination of approaches appropriate for obtaining sufficient appropriate evidence to support a conclusion about the particular accounting estimate being audited. The

[37] AS 2301.09.

[38] *See* AS 2110.60A, as amended, for examples of specific risk factors.

new standard takes into account that accounting estimates vary in nature and in how they are developed. Therefore, mandating a particular testing approach may not be feasible or practical in the circumstances. For example, in some cases, data and significant assumptions underlying the estimate may be largely based on a company's internal information (*e.g.,* sales projections or employee data), or the estimate may be generated using a customized company-specific model. In those situations, the auditor may not have a reasonable alternative to testing the company's process. Similarly, there may not be any events or transactions occurring after the measurement date related to certain estimates (*e.g.,* the outcome of a contingent liability might not be known for a number of years). Rather than imposing limits on the selection of approaches, the new standard describes the auditor's responsibilities for appropriately applying the selected approach, or combination of approaches, to obtain sufficient appropriate evidence and performing an appropriate evaluation of the evidence obtained.

As under the estimates standards, the new standard allows for the auditor to use a combination of approaches to test an estimate. For example, some estimates consist of multiple components (*e.g.,* valuation allowances) and the auditor may vary the approaches used for the individual components. The auditor may also choose to develop an independent expectation of a significant assumption used by the company in conjunction with testing the company's process for developing the estimate. Whether using a combination of approaches or a single approach, the auditor is required to have a reasonable basis for using alternative methods or deriving his or her own assumptions, as discussed in more detail below. Similarly, when using information produced by the company as audit evidence, the auditor is required to evaluate whether that information is sufficient and appropriate for the purposes of the audit, regardless of the approach the auditor uses to test the estimate.[39]

The new standard also carries forward the point from the accounting estimate standard that the auditor's understanding of the company's process for developing the estimate, and, if relevant controls are tested, the results of those tests, informs the auditor's decision about which approach or approaches to take. AS 2301 describes the auditor's responsibilities for testing controls in a financial statement audit. The new standard does not change those responsibilities, including the circumstances under which the auditor is required to test controls. Rather, the standard emphasizes that the results of the auditor's tests of controls can affect the nature, timing and extent of planned substantive procedures. Further, the auditor's understanding of the company's process related to an estimate can provide insight into the nature and extent of available audit evidence, and thus inform the auditor's selection of approaches.

Lastly, the new standard does not set forth requirements for audit documentation. The auditor's responsibilities with respect to audit documentation are addressed in AS 1215, *Audit Documentation.* Accordingly, audit documentation relevant to selection of approaches should be evident to an experienced auditor, having no previous connection with the engagement.[40]

Comparison With Standards of Other Standard Setters

ISA 540 Revised requires the auditor's procedures to be responsive to the assessed risks of material misstatement at the assertion level, considering the reasons for the assessment given to those risks, and include one or more of the three approaches to substantive testing (similar to the new standard).[41]

ISA 540 Revised also includes a requirement for the auditor to take into account that the higher the assessed risk of material misstatement, the more persuasive the audit evidence needs to be. The auditor is required to design and perform further audit procedures in a manner that is not biased towards obtaining audit evidence that may be corroborative or towards excluding audit evidence that may be contradictory.

AU–C Section 540 requires the auditor to determine whether management has appropriately applied the requirements of the applicable financial reporting framework relevant to the accounting estimate. In responding to the assessed risks of material misstatement, AU–C Section 540 also requires the auditor to undertake one or more of the three approaches discussed above, as well as providing an approach to perform a combination of tests of controls over the estimate along with substantive procedures.

Testing the Company's Process Used To Develop the Accounting Estimate

See Paragraph .09

The proposed standard included an introductory statement explaining the purpose of and steps involved in testing the company's process. Specifically, the standard explained that testing the company's process involves performing procedures to test and evaluate the methods, data, and significant assumptions used to develop the company's estimate in order to form a conclusion about whether the estimate is reasonable in the circumstances, in conformity with the applicable financial reporting framework, and free from bias that results in material misstatement.

Similar to the comments received on the proposed objective, some commenters expressed concerns about the phrase ''free from bias that results in material misstatement'' when describing the auditor's responsibilities in this area. One commenter also asked whether these requirements would apply to assumptions, models, and data provided by a company specialist. Another commenter sought clarification on the meaning of the terms ''test,'' ''data,'' and ''assumptions.''

As with the objective of the standard, paragraph .09 of the new standard was revised to describe an overarching concept for testing the company's process—that is, to form a conclusion about whether the estimate is properly accounted for and disclosed in financial statements. These revisions are responsive to comments and link the auditor's responsibilities more closely to the requirements of the Board's risk assessment standards.

As discussed in more detail below, the new standard directs the auditor to look to the requirements in Appendix A of AS 1105[42] for the auditor's responsibilities with respect to using the work of a company's specialist in the audit. This direction has been modified from the proposal to align with changes to the Specialists Release.

Finally, the meaning of the terms ''test,'' ''data,'' and ''assumptions'' in the new standard is consistent with the meaning of these terms used in the estimates standards and other PCAOB standards.

Comparison With Standards of Other Standard Setters

ISA 540 Revised provides that, as part of testing how management made the accounting estimate, the auditor is

[39] *See* AS 1105.10.

[40] *See* AS 1215.06.

[41] ISA 540 Revised also includes requirements for tests of controls. AS 2301 sets forth requirements for tests of controls in financial statement audits under PCAOB standards.

[42] The auditor's responsibilities with respect to using the work of a company specialist are presented as Appendix A of AS 1105. *See supra* note 2.

required to perform procedures to obtain sufficient appropriate audit evidence regarding the risks of material misstatement relating to (a) selection and application of the methods, significant assumptions and the data used by management in making the accounting estimate, and (b) how management selected the point estimate and developed related disclosures about estimation uncertainty.[43]

AU–C Section 540 provides that as part of testing how management made the accounting estimate and the data on which it is based, the auditor should evaluate whether the method of measurement used is appropriate in the circumstances, the assumptions used by management are reasonable in light of the measurement objectives of the applicable financial reporting framework, and the data on which the estimate is based is sufficiently reliable for the auditor's purposes.

Evaluating the Company's Methods

See Paragraphs .10–.11

The proposed standard provided that the auditor should evaluate whether the methods used by the company are (1) in conformity with the applicable financial reporting framework, including evaluating whether the data and significant assumptions are appropriately applied; and (2) appropriate for the nature of the related account or disclosure and the company's business, industry, and environment. The proposed requirements were similar to certain requirements of the fair value standard.[44]

A number of commenters expressed concerns about the requirement to evaluate whether the company's methods are appropriate for the company's ''business, industry, and environment'' because in their view, the requirement seemed to suggest all companies within a particular industry use, or should use, the same method. Two commenters also suggested adding specific requirements—to evaluate models used by the company and test the mathematical accuracy of the calculations used by the company to translate its assumptions into the accounting estimate. One commenter sought clarification on the intent of the requirement to evaluate whether the data and significant assumptions are appropriately applied under the applicable financial reporting framework.

The new standard retains substantially as proposed the requirement to evaluate whether the methods used by the company are in conformity with the applicable financial reporting framework, including evaluating whether the data is appropriately used and significant assumptions are appropriately applied under the framework. The applicable financial reporting framework may prescribe a specific method to develop an estimate or allow for alternative methods, or provide guidance on how to apply the method, including guidance on the selection or use of assumptions or data. Evaluating whether the company's method is in conformity with the financial reporting framework involves evaluating whether the data is appropriately used and significant assumptions are appropriately applied by the method, which, if applicable, would include testing the mathematical accuracy of the calculations under the method.

The methods used by the company may involve the use of a model (*e.g.,* expected future cash flows). The new standard does not prescribe specific procedures for testing models, as suggested by one commenter.[45] The Board believes that requirements specific to models are not necessary because evaluating the method, as discussed above, includes consideration of models to the extent necessary to reach a conclusion on the appropriateness of the method. Under the new standard, the necessary audit procedures to evaluate the method used by the company (which, as appropriate, include models involved in the method) are commensurate with the assessed risks associated with the estimate. For example, the risks associated with a method that uses a commercially available valuation model may relate to whether the model is appropriate for the related estimate under the applicable financial reporting framework, whereas the risks associated with a method that uses an internally-developed company model may include additional risks associated with how the model was developed. In this example, the internally-developed model scenario would require greater audit effort to respond to the broader range of risks, as compared to the commercially available model scenario. In either case, the auditor would evaluate whether the method was used appropriately, including whether adjustments, if any, to the output of the model were appropriate.

After consideration of comments, the requirement regarding evaluating the appropriateness of the method was revised to remove the reference to the company's business and industry. Under the new standard, the auditor is required to evaluate whether the company's method is appropriate for the nature of the related account or disclosure, taking into account the auditor's understanding of the company and its environment. This revised requirement is consistent with the risk assessment standards because the auditor's evaluation of the method (a substantive procedure) is informed by the auditor's understanding of the company and its environment (obtained through the auditor's risk assessment procedures).[46] Notably, part of the auditor's procedures for obtaining an understanding of the company and its environment include obtaining an understanding of relevant industry, regulatory, and other external factors, and evaluating the company's selection and application of accounting principles.[47]

The proposed standard also addressed circumstances in which a company has changed its method for developing an accounting estimate by requiring the auditor to determine the reasons for and evaluate the appropriateness of such change.

One commenter asserted that it would be more appropriate to require the auditor to evaluate whether the company's reasons for making the change are appropriate. This commenter also sought clarification on what constitutes a change in method and on the auditor's responsibility when the company has not made a determination about whether different methods result in significantly different estimates. Another commenter expressed concern that, because of a lack of clarity about the definition of ''method'' and what

[43] The Board's risk assessment standards address the auditor's responsibilities for responding to risks of material misstatement and obtaining sufficient appropriate evidence.

[44] *See* AS 2502.15 and .18.

[45] This commenter advocated for the approach taken by the IAASB regarding models. ISA 540 Revised requires that, when management's application of the method involves complex modeling, the auditor's procedures address whether judgments have been applied consistently and, when applicable, whether (1) the design of the model meets the measurement objective of framework, is appropriate in the circumstances, and changes from the prior period's model are appropriate in the circumstances; and (2) adjustments to the output of the model are consistent with the measurement objective and are appropriate in circumstances.

[46] Additionally, AS 2301.05d requires the auditor to evaluate whether the company's selection and application of significant accounting principles, particularly those related to subjective measurements and complex transactions, are indicative of bias that could lead to material misstatement of the financial statements.

[47] AS 2110.09 and .12–.13.

constitutes a change, the proposed requirement could result in potentially onerous documentation necessary to support changes to methods. Finally, one commenter suggested adding a requirement for the auditor to evaluate whether the company failed to revise its method to recognize changes in facts and circumstances.

The new standard retains as proposed the requirements for the auditor to (1) determine the reasons for changes to the method used by the company and evaluate the appropriateness of such change, and (2) evaluate the appropriateness of methods selected by the company in circumstances where the company has determined that different methods could result in significantly different estimates. The requirements in the new standard are similar to those in the fair value standard [48] and consistent with the auditor's responsibilities to obtain an understanding of the company's process used to develop the estimate, including the methods used.[49] These requirements also take into account that, in some cases, more than one method may be used to develop a particular estimate. It is important for the auditor to understand the basis for the company's change to its method, as changes that are not based on new information or other changes in the company's circumstances could be indicative of management bias (*e.g.,* changing the method to achieve a favorable financial result).[50]

With respect to other comments raised above, a separate requirement to evaluate whether the company failed to revise its method to recognize changes in facts and circumstances is unnecessary as auditors would make this determination when evaluating appropriateness of the method for the nature of the account or disclosure, taking into account the auditor's understanding of the company and its environment. That understanding should inform the auditor about conditions which might indicate that a change in method is needed. For example, the use of a discounted cash flow method to value a financial instrument may no longer be appropriate once an active market is introduced for the instrument. Moreover, changes to the method could result in a change to the corresponding estimate and affect the consistency of the financial statements (as discussed in AS 2820, *Evaluating Consistency of Financial Statements*).[51] In addition, contrary to the views of one commenter, the new standard does not impose any new documentation requirements to the existing provisions of AS 1215.

Comparison With Standards of Other Standard Setters

ISA 540 Revised provides that the auditor's procedures shall address (a) whether the method selected is appropriate in the context of the applicable financial reporting framework, and, if applicable, whether changes from the method used in prior periods are appropriate; (b) whether judgments made in selecting the method give rise to indicators of possible management bias; (c) whether the calculations are applied in accordance with the method and are mathematically accurate; and (d) whether the integrity of the significant assumptions and the data has been maintained in applying the method.[52]

AU–C Section 540 requires the auditor to determine whether the methods for making the accounting estimate are appropriate and have been applied consistently, and whether changes, if any, in accounting estimates or in the method for making them from the prior period are appropriate in the circumstances. Further, AU–C Section 540 provides that as part of testing how management made the accounting estimate, and the data on which it is based, the auditor evaluates whether the method of measurement used is appropriate in the circumstance.

Testing Data Used

See Paragraphs .12–.14

The proposed standard discussed the auditor's responsibilities for testing and evaluating both internal and external data. This included (1) reiterating existing requirements in AS 1105 to test the accuracy and completeness of information produced by the company, or to test the controls over the accuracy and completeness of that information; [53] and (2) requiring the auditor to evaluate the relevance and reliability [54] of data from external sources.

The proposed standard also provided that the auditor should evaluate whether the data is used appropriately by the company, including whether (1) the data is relevant to the measurement objective for the accounting estimate; (2) the data is internally consistent with its use by the company in other estimates tested; and (3) the source of the company's data has changed from the prior year and, if so, whether the change is appropriate.

A few commenters called for clarification of various aspects of the proposed requirements pertaining to data. For example, one commenter suggested the requirements clarify that company data supplied to a third party or company specialist is not considered to be data from an external source. This commenter also asked for a framework for evaluating whether the source of the company's data has changed from the prior year and, if so, whether the change is appropriate. Another commenter sought more clarity on whether the requirement applies to all data or may be limited to significant data.

Some commenters also suggested additional requirements in this area. For example, one commenter asserted that the existing requirements related to completeness and accuracy of data in AS 1105 do not themselves constitute a procedure that addresses risks of material misstatement and instead, suggested an express requirement to evaluate whether the data used in the estimate is accurate and complete. Another commenter pointed to the existence of data analytics tools as an alternative to sampling, and advocated for some acknowledgement in the requirements of the importance of the integrity of these tools and the controls over their development. One commenter suggested a requirement to assess whether management has appropriately understood or interpreted significant data.

The new standard retains the requirements for testing and evaluating data substantially as proposed, including requirements to evaluate whether the data is relevant to the measurement objective, internally consistent, and whether the source of the company's data has changed from the prior year and if so, whether the change is appropriate. The new standard builds on the auditor's responsibilities established by AS 1105, including requirements to test the accuracy and completeness of information produced by the company. Contrary to the views of one commenter, AS 1105 currently includes an obligation for the auditor to test company-produced data. Accordingly, an additional requirement to evaluate whether the data used in the estimate is accurate and complete is not necessary. Furthermore, the determination of the data to be tested—and the nature, timing, and extent of that testing—

[48] AS 2502.19.

[49] *See* AS 2110.28, as amended.

[50] *See* AS 2810 for requirements related to evaluating bias in accounting estimates.

[51] *See also* FASB Accounting Standards Codification Topic 250, *Accounting Changes and Error Corrections.*

[52] *See supra* note 45 for additional requirements related to models.

[53] AS 1105.10.

[54] AS 1105.07–.08.

should be based on and responsive to the assessed risks of material misstatement.

Consistent with the proposed standard, AS 2501 (Revised) makes a distinction between procedures to be performed regarding internal data and procedures regarding data from external sources used by the company to develop accounting estimates. Examples of internal data include the company's historical warranty claims and historical losses on defaulted loans. Examples of external data include economic, market, or industry data. Company data supplied by the company to a third party or company specialist is not data from an external source. The new standard also points auditors to Appendix B of AS 1105 for situations in which the valuation of an investment is based on the investee's financial results.

The new standard also retains substantially as proposed requirements to evaluate whether the data was used appropriately by the company. Evaluating the manner in which data was used by the company necessarily builds on the auditor's understanding of the company's process used to develop the estimate. This includes evaluating whether the company's selection and use of data is in conformity with the requirements of the financial reporting framework. Further, devoting audit attention to changes in the data source might reveal potential contradictory evidence and help the auditor identify potential management bias. For example, while a new source of data might result in an estimate that better reflects a company's specific circumstances, a change in data source could also be used by a company to achieve a desired financial result. The new standard has been modified to clarify that evaluating whether the data is used appropriately includes evaluating whether the data is internally consistent with its use by the company in other significant accounts and disclosures based on similar example procedures in the fair value standard.[55]

As noted by one commenter, significant advances in technology have occurred in recent years, including increased use of data analysis tools. The Board considered how changes in technology could affect the approaches to auditing accounting estimates and believes that the new standard and related amendments are sufficiently principles-based and flexible to accommodate continued advances in the use of data and technology by both companies and auditors.

Comparison With Standards of Other Standard Setters

ISA 540 Revised provides that the auditor's procedures shall address (a) whether the data is appropriate in the context of the applicable financial reporting framework, and, if applicable, changes from prior periods are appropriate; (b) whether judgments made in selecting the data give rise to indicators of possible management bias; (c) whether the data is relevant and reliable in the circumstances; and (d) whether the data has been appropriately understood or interpreted by management, including with respect to contractual terms.

AU–C Section 540 provides that in testing how management made the accounting estimate, and the data on which it is based, the auditor should evaluate whether the data on which the estimate is based is sufficiently reliable for the auditor's purposes.

Identification of Significant Assumptions

See Paragraph .15

The proposed standard provided that the auditor should identify which of the assumptions used by the company are significant assumptions to the estimate and provided criteria to assist the auditor in making this determination. Furthermore, the proposed standard provided that, if the company has identified significant assumptions used in an estimate, the auditor's identification of significant assumptions should also include those assumptions.

Some commenters expressed concern about one of the factors to be considered in identifying significant assumptions—whether an assumption relates to an identified and assessed risk of material misstatement. The commenters opined that the factor was too broad and could result in an excessive number of assumptions being identified as significant. Some of those commenters suggested adding a note to describe how all of the factors set forth in the proposal work together. A few commenters made other suggestions with respect to this requirement including (1) incorporating the requirement to identify assumptions used by the company which are important to the recognition or measurement of the accounting estimate in the financial statements into AS 2110.28e, as amended; (2) adding a qualifying phrase, such as ''as applicable,'' to the factors because some factors may not always be relevant or may vary in significance; and (3) incorporating the concept described in AS 2502.33 that significant assumptions cover matters that materially affect the estimate.

Some commenters also voiced concerns that the proposed requirement to include as significant those assumptions that the company has identified as significant may not be appropriate because (1) management is not required to designate assumptions as significant, and (2) auditors and company management may reach different conclusions about which assumptions are significant. One commenter expressed the view that the omission of a requirement to identify assumptions beyond what management identified may be inconsistent with the requirements of AS 2110, and suggested the Board clarify the auditor's responsibilities when, for example, management has not considered a specific assumption needed to correctly apply the applicable accounting framework. Another commenter suggested that assumptions identified by the company as significant should be reflected as an additional factor relevant to identifying significant assumptions rather than a requirement.

After consideration of comments received, the requirement was revised. Specifically, the factor regarding whether an assumption relates to an identified and assessed risk of material misstatement was removed. Instead, the new standard requires the auditor to take into account the nature of the accounting estimate, including related risk factors,[56] the requirements of the applicable financial reporting framework, and the auditor's understanding of the company's process for developing the estimate when identifying significant assumptions. Further, the remaining factors from the proposal—sensitivity to variation, susceptibility to manipulation and bias, unobservable data or adjustments, and dependence on the company's intent and ability to carry out specific courses of action—have been reframed in the new standard as examples of assumptions that would ordinarily be significant. The examples provided are not intended to be an exhaustive list of significant assumptions or a substitute for taking into account the auditor's understanding of the nature of the estimate, including risk factors, the requirements of the applicable financial reporting framework, and his or her understanding of the company's process for developing the estimate. Rather, the examples are provided to illustrate how the concepts in the new standard can be applied to identify significant assumptions that are important to the

[55] *See* AS 2502.39.

[56] *See* AS 2110.60–.60A, as amended.

recognition or measurement of an accounting estimate. The revised formulation provides better context for the application of the requirement, as suggested by some commenters, and prompts auditors to consider those assumptions that drive or are associated with identified risks of material misstatement.

The auditor is not expected to document a detailed comparison of each assumption used in the estimate to each factor or example described above. Instead, consistent with AS 1215, the auditor should document the significant assumptions identified and the auditor's rationale for that determination.

In addition, the proposed note—requiring auditors to include as significant those assumptions that the company has identified as significant assumptions—was not included in the new standard. As discussed above, the new standard requires the auditor, in identifying significant assumptions, to take into account the auditor's understanding of the company's process for developing the estimate, which would include understanding the assumptions used by the company in that estimate (whether expressly identified or implicit in the nature of the estimate or method used). This approach addresses commenter concerns about whether the Board was imposing a responsibility on management to identify significant assumptions.

The intent of the proposed requirement to include significant assumptions identified by the company was to provide the auditor with a starting point for the auditor's evaluation (consistent with the fair value standard). However, since the revised requirement already focuses the auditor on understanding the assumptions used by the company to develop the estimate and the associated risk factors, the new standard does not include a new factor for assumptions identified as significant by management, as suggested by a commenter.

Lastly, the requirement to identify significant assumptions was not relocated to AS 2110.28, as suggested by one commenter, because identifying significant assumptions is an inherent part of testing the company's process for developing estimates.

Evaluation of Significant Assumptions

See Paragraphs .16–.18

The proposed standard set forth requirements to evaluate the reasonableness of significant assumptions used by the company, both individually and in combination, including evaluating whether (1) the company has a reasonable basis for those assumptions and, when applicable, the company's selection of assumptions from a range of potential assumptions; and (2) significant assumptions are consistent with, among other things, the company's objectives, historical data, the economic environment, and market information. In circumstances when the auditor develops an expectation of an assumption to evaluate its reasonableness, the proposed standard also provided that the auditor should have a reasonable basis for that expectation.

Some commenters asked for clarification of certain aspects of the requirement. For example, a few commenters asked for clarification on the requirement to assess whether management has a reasonable basis for its assumptions. Another commenter asked for an explanation of what ''reasonable'' is intended to mean in the context of accounting estimates. One commenter sought clarification on how to evaluate differences between management's assumption and the auditor's expectation in circumstances where the auditor develops an expectation of an assumption to evaluate its reasonableness. Another commenter requested that the requirement address factors relevant to evaluating reasonableness of forward-looking information in anticipation of the new accounting standard on credit losses.[57]

With respect to evaluating consistency with baseline information described in the standard, one commenter asked for clarification of how the requirement to evaluate factors in paragraph .16 works with the requirement to ''test'' in paragraph .09. This commenter also asked for clarification of the extent of the procedures to be performed when evaluating the consistency of significant assumptions with the contextual information set forth in the standard, where relevant, asserting that the requirement may be difficult to apply in practice. Another commenter suggested that the auditor be required to *consider* whether the assumptions are consistent with the information provided in order to better align the provision with language used by the IAASB.

One commenter suggested inclusion of a specific requirement to assess significant assumptions for management bias.

The new standard retains the requirements for evaluating reasonableness of significant assumptions substantially as proposed. The requirements recognize that estimates are generally developed using a variety of assumptions and focus the auditor on how the company selects its assumptions.

The auditor's assessment of whether the company has a reasonable basis for a significant assumption (including an assumption based on forward-looking information) relates to whether the assumption used by the company is based on an analysis of relevant information, or determined arbitrarily, with little or no such analysis. The auditor's assessment also involves considering whether the company considered relevant evidence, regardless of whether it corroborates or contradicts the company's assumption.

Under the new standard, the auditor should evaluate whether the significant assumptions are consistent with relevant information such as the company's objectives; historical experience (*e.g.,* prior years' assumptions and past practices), taking into account changes in conditions affecting the company; and other significant assumptions in other estimates tested (*e.g.,* assumptions are consistent with each other and other information obtained). This requirement is consistent with requirements in the fair value standard.[58] In making this evaluation, the auditor uses his or her understanding of the company and its environment, the assessed risks of material misstatement, and his or her understanding of the process used to develop the estimates.

In circumstances where the auditor develops an expectation of an assumption to evaluate reasonableness, the auditor is required to have a reasonable basis for that expectation (consistent with the requirements regarding developing independent expectations), taking into account relevant information, including the information set forth in the requirement. The new standard does not prescribe specific follow-up procedures when there are differences between the auditor's expectation and the company's significant assumptions. The nature and extent of procedures would depend on relevant factors such as the reason for the difference and the potential effect of the difference on the accounting estimate.[59]

[57] *See* FASB Accounting Standards Update No. 2016–13, *Financial Instruments—Credit Losses* (Topic 326): *Measurement of Credit Losses on Financial Instruments* (June 2016).

[58] *See generally* AS 2502.29–.36.

[59] *See* AS 2501.30–.31 (Revised).

With respect to the comment regarding management bias, the new standard was revised to provide that responding to risks of material misstatement involves, among other things, evaluating potential management bias in accounting estimates, and its effect on the financial statements (in paragraph .05). Furthermore, the requirements in paragraphs .30–.31 of the new standard, as well as AS 2810.27 address the evaluation of bias in accounting estimates. Therefore, an explicit requirement to evaluate bias as part of evaluating reasonableness of significant assumptions is not necessary.

Intent and Ability

As part of evaluating the reasonableness of significant assumptions, the proposed standard provided that the auditor take into account factors (*e.g.,* company's past history of carrying out stated intentions, written plans or other documentation, stated reasons for course of action, and the company's ability to carry out action based on financial resources, legal restrictions, etc.) that affect the company's intent and ability to carry out a particular course of action when such action is relevant to the significant assumption.

One commenter asserted that compliance with the proposed requirements would not be possible when information described in factors does not exist and suggested adding the phrase ''as applicable'' to the requirement.

The new standard retains, as proposed, the requirement to take into account specific factors in evaluating the reasonableness of significant assumptions when the significant assumption is based on the company's intent and ability to carry out a particular course of action. As in other PCAOB standards, the auditor takes factors into account to the extent they are relevant.

Critical Accounting Estimates

With respect to critical accounting estimates, the proposed standard provided that the auditor should obtain an understanding of how management analyzed the sensitivity of its significant assumptions [60] to change, based on other reasonably likely outcomes that would have a material effect, and to take that understanding into account when evaluating the reasonableness of the significant assumptions and potential for management bias.

Some commenters expressed concern that the proposed requirement may place undue emphasis on, or create an inappropriate linkage with, a company's management discussion and analysis (''MD&A'') disclosure. One commenter also suggested that the requirement may not always apply (if, for example, management were unable to perform a sensitivity analysis), and suggested clarification that the intent was for the auditor to understand whether, and if so, how, management analyzed the sensitivity of significant assumptions to change.

Some commenters suggested the proposed requirement be recast or aligned as a risk assessment procedure. For example, one commenter observed that the auditor's and management's judgment can differ with respect to critical accounting estimates. That commenter also stated that it was unclear whether the auditor should obtain this understanding if choosing a substantive-only testing strategy. One commenter suggested limiting the proposed requirement to critical accounting estimates with significant risks. Another commenter sought clarification that the requirement does not alter the auditor's responsibilities under AS 2710, *Other Information in Documents Containing Audited Financial Statements.*

The new standard retains the requirement substantially as proposed. In consideration of comments, the requirement was clarified to better align with the SEC's requirement for critical accounting estimates [61] by describing that the sensitivity of management's significant assumptions to change is based on other reasonably likely outcomes that would have a material effect on the company's financial condition or operating performance.

Under the new standard, the auditor is not expected to evaluate the company's compliance with the SEC's MD&A requirements, but rather to obtain an understanding of management's analysis of critical accounting estimates and to use this understanding in evaluating the reasonableness of the significant assumptions and potential for management bias in accordance with AS 2810.27. In the Board's view, the sensitivity analysis used by the company in developing the critical accounting estimates disclosures for the year under audit can provide important information about the significant assumptions underlying those estimates.

The Board considered recasting the requirement to obtain an understanding of management's analysis of its critical accounting estimates as a risk assessment procedure, as suggested by some commenters. However, this understanding is a necessary part of evaluating the reasonableness of significant assumptions and the potential for management bias in critical accounting estimates, which is a substantive procedure. Moreover, MD&A disclosures regarding critical accounting estimates might not be available until late in the audit, and therefore could affect the timing of related audit procedures.

The requirements in the new standard with respect to critical accounting estimates would not change the auditor's responsibilities under AS 2710 regarding other information in documents containing audited financial statements.

Although there may be significant overlap between estimates with significant risks identified by the auditor and the critical accounting estimates identified by management, the requirements for auditors under paragraph .18 of the new standard are not limited to estimates with significant risks as suggested by one commenter. Rather, the paragraph is consistent with the requirements to evaluate the reasonableness of assumptions in significant accounts and disclosures. The MD&A disclosures regarding critical accounting estimates can provide relevant information to inform the auditor's evaluation of the reasonableness of the significant assumptions and potential for management bias.

Comparison With Standards of Other Standard Setters

ISA 540 Revised provides that the auditor's procedures shall address (a) whether the significant assumptions are appropriate in the context of the applicable financial reporting framework, and, if applicable, changes from prior periods are appropriate; (b) whether judgments made in selecting the significant assumptions give rise to indicators of management bias; (c) whether the significant assumptions are consistent with each other and with those used in other accounting estimates, or with related assumptions used in other areas of the entity's business activities, based on the auditor's knowledge obtained in the

[60] For the purposes of this requirement, significant assumptions identified by the company may not necessarily include all of those identified by the auditor as significant.

[61] *See Commission Guidance Regarding Management's Discussion and Analysis of Financial Condition and Results of Operations,* Release No. 33–8350 (Dec. 19, 2003), 68 FR 75056 (Dec. 29, 2003), at Section V (''Critical Accounting Estimates'') for management's responsibilities related to critical accounting estimates.

audit; and (d) when applicable, whether management has the intent to carry out specific courses of action and has the ability to do so.

ISA 540 Revised also requires the auditor to address whether, in the context of the applicable financial reporting framework, management has taken appropriate steps to (a) understand estimation uncertainty; and (b) address estimation uncertainty by selecting an appropriate point estimate and by developing related disclosures about estimation uncertainty. When, in the auditor's judgment based on the audit evidence obtained, management has not taken appropriate steps to understand or address estimation uncertainty, ISA 540 Revised requires the auditor to, among other things, request management to perform additional procedures to understand estimation uncertainty or to address it by reconsidering the selection of management's point estimate or considering providing additional disclosures relating to the estimation uncertainty, and evaluate management's response. If the auditor determines that management's response to the auditor's request does not sufficiently address estimation uncertainty, to the extent practicable, the auditor is required to develop an auditor's point estimate or range.

AU–C Section 540 provides that as part of testing how management made the accounting estimate, and the data on which it is based, the auditor shall evaluate whether the assumptions used by management are reasonable in light of the measurement objectives of the applicable financial reporting framework. Further, for accounting estimates that give rise to significant risks, AU–C Section 540 requires the auditor to evaluate: (a) How management considered alternative assumptions or outcomes and why it rejected them, or how management has otherwise addressed estimation uncertainty in making accounting estimates; (b) whether the significant assumptions used by management are reasonable; and (c) where relevant to the reasonableness of the significant assumptions used by management or the appropriate application of the applicable financial reporting framework, management's intent to carry out specific courses of action and its ability to do so.

AU–C Section 540 further provides that if, in the auditor's professional judgment, management has not addressed adequately the effects of estimation uncertainty on the accounting estimates that give rise to significant risks, the auditor should, if considered necessary, develop a range with which to evaluate the reasonableness of the accounting estimate.

Company's Use of a Specialist or Third-Party Pricing Information

See Paragraphs .19–.20

The proposed standard would have required the auditor to also take into account the work of a company's specialist used in developing an accounting estimate when determining the evidence needed in testing the company's process. The proposed standard also referenced Appendix B of AS 1105 [62] for testing and evaluating the work of a company's specialist when that work is used to support a conclusion regarding a relevant assertion, such as a relevant assertion related to an accounting estimate.

In addition, when third-party pricing information used by the company is significant to the valuation of financial instruments, the proposed standard required the auditor to evaluate whether the company has used that information appropriately and whether it provides sufficient appropriate evidence.

One commenter expressed concern that the proposed requirement would result in practical challenges as it would require the auditor to test the methods, data, and significant assumptions used or developed by a company specialist in the same manner that the auditor would if the accounting estimate was developed without the assistance of a company specialist. Another commenter advocated for closer alignment with the proposed requirements of Appendix B of AS 1105, citing, for example, requirements for testing the accuracy and completeness of company-produced data used by the specialists and evaluating the relevance and reliability of data obtained from external sources.

One commenter advocated for requiring auditors to consider whether company specialists possess specific credentials as part of auditing estimates under the proposed standard.

With respect to circumstances when third-party pricing information used by the company is significant to the valuation of financial instruments, one commenter requested additional guidance or criteria for evaluating whether the company has used third-party pricing information ''appropriately'' when assessing whether the information provides sufficient appropriate evidence.

In consideration of comments (including those received on the Specialists Proposal), the new standard requires the auditor to look to the requirements of Appendix A of AS 1105 that discuss the auditor's responsibilities for using the work of company specialists.[63] Appendix A of AS 1105 sets forth, among other things, procedures to be performed in evaluating the data, assumptions, and methods used by a company's specialist. Further, rather than addressing specific credentials of the specialist, Appendix A of AS 1105 requires the auditor to assess the knowledge, skill, and ability of the company's specialist.

The new standard retains as proposed the requirement to evaluate, when third-party pricing information used by the company is significant to the valuation of financial instruments, whether the company has used third-party pricing information appropriately and whether it provides sufficient appropriate evidence. The auditor's determination as to whether third-party pricing information was used appropriately by the company includes whether the information is in conformity with the applicable financial reporting framework.

Comparison With Standards of Other Standard Setters

ISA 540 Revised provides that when using the work of a management's expert, the requirements in paragraphs 21–29 of ISA 540 Revised [64] may assist the auditor in evaluating the appropriateness of the expert's work as audit evidence for a relevant assertion in accordance with paragraph 8(c) of ISA 500, *Audit Evidence.*[65] In evaluating the work of the management's expert, the nature, timing, and extent of the further audit procedures are affected by the auditor's

[62] In a separate proposal, the Board proposed to amend its standards regarding the auditor's use of the work of specialists, including specialists employed or engaged by the company (''company's specialist''). *See Proposed Amendments to Auditing Standards for the Auditor's Use of the Work of Specialists,* PCAOB Release No. 2017–003 (''Specialists Proposal''). The Specialists Proposal set forth these amendments in Appendix B of AS 1105.

[63] The auditor's responsibilities with respect to using the work of a company's specialist are presented as Appendix A of AS 1105. *See* Specialists Release, *supra* note 2. The analogous proposed requirements were originally presented as Appendix B of AS 1105 in the Specialists Proposal.

[64] Paragraphs 21–29 of ISA 540 Revised describe the requirements for obtaining audit evidence from events occurring up to the date of the auditor's report; testing how management made the accounting estimate; and developing an auditor's point estimate or range.

[65] ISA 540 Revised provides that in obtaining audit evidence regarding the risks of material misstatement relating to accounting estimates, irrespective of the sources of information to be used as audit evidence, the auditor shall comply with the relevant requirements in ISA 500.

evaluation of the expert's competence, capabilities and objectivity, the auditor's understanding of the nature of the work performed by the expert, and the auditor's familiarity with the expert's field of expertise.

Developing an Independent Expectation of the Estimate

See Paragraph .21

The proposal sought to retain the general approach in the estimates standards for developing an independent expectation,[66] and more explicitly tailored the requirements to the different sources of the methods, data, and assumptions used by the auditor. Those sources include (1) independent assumptions and methods of the auditor, (2) data and assumptions obtained from a third party, and (3) the company's data, assumptions, or methods.

Additionally, while seeking to retain the requirement under the fair value standard for an auditor to understand management's assumptions to ensure that his or her independent estimate takes into consideration all significant variables,[67] the proposal expressly required the auditor to take into account the requirements of the applicable financial reporting framework.

The proposal also replaced certain terms used in the estimates standards to describe audit procedures with more neutral language (such as replacing ''corroborate'' with ''compare'') to reduce the risk of confirmation bias or anchoring bias when auditing accounting estimates.

Commenters on this topic were generally supportive of the proposed requirement for developing an independent expectation, indicating that the requirement is clear and sufficient. One commenter asked the Board to clarify situations where developing an independent expectation of the estimate would be appropriate. Another commenter indicated that using the phrase ''developing an independent expectation'' implies that the auditor would reach this expectation independently, without reference to management's methods, data, and assumptions, and recommended that the Board consider changing this phrasing to developing a ''comparative estimate'' or a ''point estimate'' to better reflect the procedures described.

After consideration of these comments, the requirement is adopted substantially as proposed. The determination of when to use an approach or a combination of approaches is at the auditor's discretion based on the relevant facts and circumstances. In addition, the use of the phrase ''developing an independent expectation of the estimate'' is consistent with the concept in the estimates standards. The intention of the requirement is not to imply that the auditor could (or should) develop an expectation of the estimate without reference to the company's methods, data, and assumptions, but rather to more explicitly acknowledge that, in developing an independent expectation of the estimate, an auditor could use methods, data, and assumptions obtained from different sources.

Consistent with the proposal, the new standard tailors the requirements to develop an independent expectation to the different sources of the methods, data, and assumptions used by the auditor as set forth in the table below and discussed further in the sections that follow.

Auditor's independent expectation developed using:	Auditor responsibility under the new standard:
Assumptions and methods of the auditor	Have a reasonable basis for the assumptions and methods.
Data and assumptions obtained from a third party	Evaluate the relevance and reliability of the data and assumptions.
Company data, assumptions, or methods	Test and evaluate in the same manner as when testing the company's process.

This approach provides more direction to auditors in light of the various ways in which auditors develop an independent expectation of accounting estimates.

The new standard also expressly prompts the auditor to take into account the requirements of the applicable financial reporting framework when developing an independent expectation. By taking into account the requirements of applicable financial reporting framework, the auditor might identify additional considerations relevant to the estimate that the company did not take into account in its own process for developing the estimate. As with the proposal, the new standard also uses more neutral terms, such as ''evaluate'' and ''compare'' to mitigate the risk of confirmation bias or anchoring bias when auditing accounting estimates. For example, the new standard requires the auditor to compare the auditor's independent expectation to the company's accounting estimate instead of developing an independent fair value estimate ''for corroborative purposes.''[68]

Independent Assumptions and Methods of the Auditor

See Paragraph .22

The proposal recognized that, when developing an independent expectation of an estimate, the auditor can independently derive assumptions or use a method that differs from the company's method. In those situations, the auditor should have a reasonable basis for his or her assumptions and methods used.

Commenters on this topic were generally supportive of the proposed requirement that the auditor have a reasonable basis for the assumptions and methods used when developing an independent expectation of the estimate. The requirement is adopted as proposed.

Under the new requirement, the auditor is required to have a reasonable basis for the assumptions and methods used to develop an independent expectation. Having a reasonable basis would reflect consideration of, among other things, the nature of the estimate; relevant requirements of the applicable financial reporting framework; the auditor's understanding of the company, its environment, and the company's process for developing the estimate; and other relevant audit evidence, regardless of whether the evidence corroborates or contradicts the company's assumptions.

Data and Assumptions Obtained From a Third Party

See Paragraph .23

The proposal directed the auditor to the existing requirements in AS 1105 when evaluating the relevance and reliability of data or assumptions obtained from a third party. This approach is consistent with the requirements for evaluating data from external sources as described above.

The proposal also directed the auditor to comply with the requirements of proposed AS 1210 when the third party

[66] *See* AS 2501.12, AS 2502.40, and AS 2503.40.

[67] *See* AS 2502.40.

[68] *See* AS 2502.40.

is a specialist engaged by the auditor.[69] The proposal did not set forth specific requirements related to methods obtained from a third party that is not a specialist.

One commenter expressed concern that the proposed requirements were too restrictive and somewhat impractical and that it may not be possible or necessary to obtain data and assumptions from a third party and to create assumptions independent of those of the company. The commenter recommended that the Board retain the extant direction allowing the auditor to use management's assumptions when developing independent expectations.

After consideration of the comment, the requirement is adopted as proposed. As described below, consistent with the estimates standards and the proposal, the new requirement continues to allow the use of company data, assumptions, or methods while also allowing the auditor to use other sources.[70]

Also consistent with the proposal, the new standard does not set forth specific requirements related to methods obtained from a third party, as the Board understands that auditors typically use either the company's methods or their own (which may include specialists' methods) in developing an independent expectation.

Use of Company Data, Assumptions, or Methods

See Paragraph .24

The proposal sought to retain the existing requirements for the auditor to test data from the company and evaluate the company's significant assumptions for reasonableness, when used by the auditor to develop an independent estimate.[71] The proposal also required the auditor to evaluate the company's method, if the auditor uses that method to develop an independent expectation. The proposal recognized that auditors may use a portion or a combination of data, assumptions, and method provided by the company in developing their expectations. If the company's data, assumptions, or methods are those of a company's specialist, the proposal also directed the auditor to comply with the requirements in proposed Appendix B of AS 1105 for using the work of a company specialist as audit evidence.

One commenter suggested that the Board clarify that when developing an independent expectation of an estimate, the auditor's testing of management's process is limited to those areas on which the auditor intends to rely for purposes of developing the expectation.

This provision is adopted substantially as proposed. Under the new standard, when an auditor chooses to develop an independent expectation using certain of the company's data, significant assumptions, or methods, the auditor is required to test such data or evaluate such assumptions or methods, using the corresponding procedures that apply when the auditor tests the company's process. In response to comments, the text was revised from the proposal to clarify the scope of the obligation to test. The new standard also includes a note referring the auditor to look to the requirements in Appendix A of AS 1105 in situations where the company's data, assumptions or methods were those of a company's specialist.[72]

Comparison With Standards of Other Standard Setters

When the auditor develops a point estimate or a range to evaluate management's point estimate and related disclosures about estimation uncertainty, ISA 540 Revised provides that the auditor's further audit procedures include procedures to evaluate whether the methods, assumptions or data used are appropriate in the context of the applicable financial reporting framework. ISA 540 Revised also provides that regardless of whether the auditor uses management's or the auditor's own methods, assumptions or data, further audit procedures be designed and performed to address the matters in paragraphs 23–25 of ISA 540 Revised.[73]

AU–C Section 540 provides that if the auditor uses assumptions or methods that differ from management's, the auditor shall obtain an understanding of management's assumptions or methods sufficient to establish that the auditor's point estimate or range takes into account relevant variables and to evaluate any significant differences from management's point estimate.

Developing an Independent Expectation as a Range

See Paragraph .25

The proposal provided that, if the auditor's independent expectation consisted of a range rather than a point estimate, the auditor should determine that the range was appropriate for identifying a misstatement of the company's accounting estimate and was supported by sufficient appropriate audit evidence.[74]

Some commenters asked for clarification or guidance on how to determine that a range is appropriate for identifying a misstatement. Some commenters stated that the proposed requirement implied a level of precision within a range that may not be feasible. Some commenters suggested expressly acknowledging situations where the range is greater than the materiality threshold by including, for example, language similar to IAASB's Exposure Draft, Proposed ISA 540 (Revised) (''ED 540''), paragraph A134.[75] One of these commenters argued that for certain highly judgmental estimates, additional audit work cannot reduce the size of the range below the materiality threshold, and that the proposed requirement could lead to excessive work. Another commenter suggested that the proposed standard did not sufficiently address estimation uncertainty, including what constitutes a reasonable range of estimation uncertainty and how auditors are to address and disclose such uncertainty.

After considering the comments, the requirement has been revised to clarify that, when establishing an independent expectation as a range, the auditor should determine that the range encompasses only reasonable outcomes, in conformity with applicable financial reporting framework, and is supported by sufficient appropriate evidence.

Also, a footnote has been added to paragraph .26 of the new standard reminding auditors that, under AS 2810.13, if a range of reasonable estimates is supported by sufficient appropriate evidence and the recorded estimate is outside of the range of

[69] *See* paragraph .08 of the proposed standard.

[70] Appendix A of AS 2501 (Revised) applies when the auditor develops an independent expectation of the fair value of financial instruments using pricing information from a third party. These requirements are discussed further below.

[71] *See* AS 2502.40.

[72] *See* Specialists Release, *supra* note 2.

[73] Paragraphs 23–25 of ISA 540 Revised describe the auditor's further procedures for addressing methods, significant assumptions, and data.

[74] The estimates standards provide for the development of an independent point estimate as one approach for testing accounting estimates, but these standards do not discuss developing an independent expectation as a range of estimates. AS 2810 provides for developing a range of possible estimates for purposes of the auditor's evaluation of misstatements relating to accounting estimates.

[75] ED 540, paragraph A134 stated that ''In certain circumstances, the auditor's range for an accounting estimate may be multiples of materiality for the financial statements as a whole, particularly when materiality is based on operating results (for example, pre-tax income) and this measure is relatively small in relation to assets or other balance sheet measures. In these circumstances, the auditor's evaluation of the reasonableness of the disclosures about estimation uncertainty becomes increasingly important. Considerations such as those included in paragraphs A133, A144, and A145 may also be appropriate in these circumstances.'' Substantially similar guidance appears in paragraph A125 of ISA 540 Revised.

reasonable estimates, the auditor should treat the difference between the recorded accounting estimate and the closest reasonable estimate as a misstatement.

The requirement that the range should be supported by sufficient appropriate evidence is consistent with the principle in the new standard that the auditor should have a reasonable basis for the data, assumptions, and methods used in developing an independent expectation. The sufficiency and appropriateness of the evidence needed will depend on the relevant circumstances, including the nature of the accounting estimate, the requirements of the applicable financial reporting framework, and the number and nature of significant assumptions and data used in the independent expectation.

Notably, the new standard does not restrict the size of the auditor's range to the level of materiality for the financial statements as a whole determined under AS 2105 (''financial statement materiality''). An appropriate range in accordance with paragraph .25 of the new standard might be very large, even exceeding financial statement materiality. For example, under certain market conditions, comparable transactions for some assets, even after appropriate adjustment, might indicate a wide range of fair value measurements. As another example, some accounting estimates are highly sensitive to one or more assumptions, such that a small change in an assumption can result in a large change in the value of the estimate. In those situations, the auditor's responsibility is to determine an appropriate range based on the criteria set forth in the new standard.

The Board considered the comments asking for a statement in the standard acknowledging that an independent expectation as a range could exceed the materiality level determined under AS 2105. However, such a statement was not added because it would not have changed the auditor's responsibility under the new standard.

Finally, with respect to estimation uncertainty, the new standard and related amendments acknowledge that estimates have estimation uncertainty, which affects the risks of material misstatement. Neither the Board nor auditors are responsible for placing limits on the range of estimation uncertainty. That uncertainty is a function of the estimate's measurement requirements under the applicable financial reporting framework, the economic phenomena affecting that estimate, and the fact that estimates involve assessments of future outcomes. Under the new standard, the auditor's responsibility is to consider estimation uncertainty in assessing risk and performing procedures in response to risk, which involves evaluating whether the accounting estimates are reasonable in the circumstances and in conformity with the applicable financial reporting framework, as well as evaluating management bias in accounting estimates, and its effect on the financial statements. These responsibilities are better aligned with the auditor's overall responsibility for planning and performing financial audits.[76]

Comparison With Standards of Other Standard Setters

ISA 540 Revised provides that if the auditor develops an auditor's range, the auditor shall (a) determine that the range includes only amounts that are supported by sufficient appropriate audit evidence and have been evaluated by the auditor to be reasonable in the context of the measurement objectives and other requirements of the applicable financial reporting framework; and (b) design and perform further audit procedures to obtain sufficient appropriate audit evidence regarding the assessed risks of material misstatement relating to the disclosures in the financial statements that describe the estimation uncertainty.

AU–C Section 540 provides that if the auditor concludes that it is appropriate to use a range, the auditor should narrow the range, based on audit evidence available, until all outcomes within the range are considered reasonable.

Comparing the Auditor's Independent Expectation to the Company's Accounting Estimate

See Paragraph .26

The proposal set forth the requirement for the auditor to compare the auditor's independent expectation to the company's estimate and evaluate the differences in accordance with AS 2810.13.[77]

No comments were received on this topic. The requirement is adopted substantially as proposed, with an expanded footnote reminding auditors that under AS 2810.13, if a range of reasonable estimates is supported by sufficient appropriate evidence and the recorded estimate is outside of the range of reasonable estimates, the auditor should treat the difference between the recorded accounting estimate and the closest reasonable estimate as a misstatement.

Evaluating Audit Evidence From Events or Transactions Occurring After the Measurement Date

See Paragraphs .27–.29

The proposal noted that events and transactions that occur after the measurement date can provide relevant evidence to the extent they reflect conditions at the measurement date. The proposal provided that the auditor should evaluate whether the audit evidence from events or transactions occurring after the measurement date is sufficient, reliable, and relevant to the company's accounting estimate and whether the evidence supports or contradicts the company's estimate.

Commenters were generally supportive of the proposed requirements, indicating they were clear and sufficient. Two commenters requested additional clarity regarding the assessment of whether the audit evidence is sufficient, reliable, and relevant to the company's accounting estimate, one in the context of subsequent events and one more generally. Another commenter suggested including cautionary language with respect to fair value estimates indicating that fair value measurements are derived from information that would be known or knowable to a market participant at the measurement date.

The Board considered these comments and determined that the requirements in the proposal are sufficiently clear and has adopted the requirements as proposed.

The new standard, as with the proposal, requires the auditor to evaluate whether audit evidence from events or transactions occurring after the measurement date is sufficient, reliable, and relevant to the company's accounting estimate and whether the evidence supports or contradicts the company's estimate. This would include evaluating pertinent information that is known or knowable at the measurement date. For example, the sale of a bond shortly after the balance-sheet date (which in this case is also the measurement date) may provide relevant evidence regarding the company's fair value measurement of the bond as of the balance sheet date if the intervening market conditions remain the same. As another example, when a business combination occurred during the year, events occurring

[76] Auditors may also have disclosure and reporting responsibilities in relation to these matters. *See* AS 3101, *The Auditor's Report on an Audit of Financial Statements When the Auditor Expresses an Unqualified Opinion,* and AS 1301, *Communications with Audit Committees.*

[77] *See* additional discussion of evaluating audit results below.

subsequent to the measurement date, such as the cash settlement of short-term receivables, may provide relevant evidence about the accounting estimate as of the measurement date if they reflect conditions at the measurement date. In those situations, the audit procedures would be focused on evaluating the relevance and reliability of the evidence provided by the subsequent event, including the extent to which the subsequent event reflects conditions existing at the measurement date.

Additionally, the new standard requires the auditor to take into account changes in the company's circumstances and other relevant conditions between the event or transaction date and the measurement date. It also notes that as the length of time from the measurement date increases, the likelihood that events and conditions have changed during the intervening period also increases.

Comparison With Standards of Other Standard Setters

The corresponding ISA 540 Revised requirement provides that when the auditor's further audit procedures include obtaining audit evidence from events occurring up to the date of the auditor's report, the auditor shall evaluate whether such audit evidence is sufficient and appropriate to address the risks of material misstatement relating to the accounting estimate, taking into account that changes in circumstances and other relevant conditions between the event and the measurement date may affect the relevance of such audit evidence in the context of the applicable financial reporting framework.

AU–C Section 540 provides that the auditor should determine whether events occurring up to the date of the auditor's report provide audit evidence regarding the accounting estimate.

Evaluating Audit Results

See Paragraphs .30–.31

The proposed standard incorporated existing requirements of AS 2810 for evaluating the results of audit procedures performed on accounting estimates, including evaluating bias in accounting estimates (both individually and in the aggregate).

One commenter noted that the requirements could be interpreted as a presumption that bias always exists in accounting estimates or a requirement to determine whether actual bias exists, and suggested that the standard include the word ''potential'' when referencing bias, similar to the requirements of AS 2810. Another commenter sought clarification as to whether the proposed standard required the auditor to evaluate bias in individual assumptions.

The new standard retains paragraphs .30 and .31 regarding evaluating audit results substantially as proposed. In consideration of comments, paragraphs .30 and .31 were revised to include a reference to potential bias, consistent with AS 2810.24–.27. The requirements in the new standard are intended to remind auditors of their existing responsibilities to evaluate potential bias in accounting estimates (both individually and in the aggregate) and its effect on the financial statements. For example, indicators of management bias may affect the assessed risk of material misstatement and the auditor's conclusions about whether accounting estimates are reasonable in the circumstances. As discussed above, individual assumptions that are susceptible to manipulation or bias are ordinarily considered significant and evaluated for reasonableness.[78]

Comparison With Standards of Other Standard Setters

ISA 540 Revised requires the auditor to evaluate whether judgments and decisions made by management in making the accounting estimates included in the financial statements, even if they are individually reasonable, are indicators of possible management bias. When indicators of possible management bias are identified, the auditor shall evaluate the implications for the audit. Where there is intention to mislead, management bias is fraudulent in nature.[79]

AU–C Section 540 requires the auditor to review the judgments and decisions made by management in the making of accounting estimates to identify whether indicators of possible management bias exist.

Both ISA 540 Revised and AU–C Section 540 provide that the auditor should determine whether the accounting estimates and related disclosures are reasonable in the context of the applicable financial reporting framework, or are misstated.

Appendix A—Special Topics

Introduction

Appendix A of the proposed standard set forth requirements for the auditor to perform specific procedures when auditing the fair value of financial instruments, focusing on the use of pricing information from third parties such as pricing services and brokers or dealers. The proposal also incorporated and built on topics discussed in the derivatives standard, including certain procedures for auditing the valuation of derivatives and securities measured at fair value. The proposed requirements were informed by outreach, including the Pricing Sources Task Force, and publications of other standard setters.

Paragraph .A1 of Appendix A prompts the auditor to obtain an understanding of the nature of the financial instruments being valued in order to identify and assess risks of material misstatement related to the fair value of those instruments. Paragraph .A2 provides the general framework, specifically, the auditor's responsibility to determine whether the pricing information from a third party[80] provides sufficient appropriate evidence to respond to the risks of material misstatement.

Paragraphs .A3–.A9 provide more specific direction for cases where pricing information from pricing services and brokers or dealers are used. Paragraph .A10 sets forth factors for the auditor to take into account when obtaining an understanding of how unobservable inputs were determined and evaluating the reasonableness of unobservable inputs when the unobservable inputs are significant to the valuation of financial instruments.

A number of commenters expressed general support for the proposed Appendix A but commented on specific aspects of the proposed requirements. These comments are addressed below in a section-by-section discussion of the proposal and the new standard. In addition, there were two areas of comment that relate to several aspects of the proposed Appendix: (1) The extent to which audit procedures could be performed over groups or classes of financial instruments, rather than individual instruments; and (2) the role played by centralized groups within an accounting firm, such as a pricing desk, in performing procedures related to

[78] *See* discussion of identification of significant assumptions above.

[79] ISA 540 Revised further requires the auditor to evaluate, based on the audit procedures performed and audit evidence obtained, whether (a) the assessments of the risks of material misstatement at the assertion level remain appropriate, including when indicators of possible management bias have been identified; (b) management's decisions relating to the recognition, measurement, presentation and disclosure of these accounting estimates in the financial statements are in accordance with the applicable financial reporting framework; and (c) sufficient appropriate audit evidence has been obtained.

[80] Appendix A focuses primarily on pricing information from pricing services and brokers or dealers, but paragraph .A2 also covers pricing information obtained from other third-party sources, such as exchanges and publishers of exchange prices.

testing the fair value of financial instruments.

On the first area of comment, commenters asked for clarification on whether all of the required procedures in Appendix A were to be applied to financial instruments individually; expressing concerns that doing so would lead to excessive work. Some commenters suggested clarifying changes to the proposed Appendix, such as inserting ''type of'' or ''types of'' before the term ''financial instrument'' in various requirements in the appendix. One commenter suggested adding a note indicating that the procedures in paragraphs .A4–.A8 of the proposal were not required to be applied to each individual financial instrument. Another commenter suggested that auditors be allowed to understand and evaluate the methods and inputs used by pricing services at the level of the asset class for financial instruments with lower estimation uncertainty.

The Board did not intend that all required procedures in Appendix A be applied to individual financial instruments in all cases. Rather, the Board intended that financial instruments with similar characteristics and risks of material misstatement could be grouped for purposes of applying substantive procedures. In some circumstances, however, it may not be appropriate to group financial instruments (for example, where financial instruments are dissimilar, or where the auditor does not have a reasonable basis upon which to base the grouping). As discussed in greater detail below, Appendix A of the new standard has been revised to clarify areas where it may be appropriate for procedures to be performed over groups of financial instruments rather than individual financial instruments.

On the second area, commenters asked for additional guidance about the role of centralized groups that the largest accounting firms often use to assist in performing procedures related to testing the fair value of financial instruments. The specific services performed and the nature and level of detail of information provided by centralized groups to engagement teams can vary. Some commenters suggested that the proposal further address how the requirements apply when a centralized pricing desk is used and raised specific issues regarding the use of centralized groups under the proposed requirements. One commenter advocated for more precise requirements about the degree to which procedures may be executed by a centralized group. The new standard does not prescribe the role or responsibilities of centralized pricing groups in audits, and Appendix A does not provide specific direction in that regard. Instead, the new standard allows engagement teams to continue seeking assistance from centralized groups when performing the procedures required under the new standard. This approach gives audit firms the flexibility to determine the most appropriate way to use their centralized pricing groups on an audit to satisfy the requirement of the new standard.

As under the proposal, centralized groups within the firm that assist engagement teams with evaluating the specific methods and assumptions related to a particular instrument, identifying and assessing risks of material misstatement, or evaluating differences between a company's price and a pricing service's price generally would be subject to the supervision requirements of AS 1201.[81]

Identifying and Assessing Risks of Material Misstatement Related to the Fair Value of Financial Instruments

See Paragraph .A1

Under the proposal, the auditor was to obtain an understanding of the nature of the financial instruments being valued to identify and assess the risks of material misstatement related to their fair value, taking into account specified matters.

Commenters were generally supportive of the proposed requirement. One commenter suggested that the auditor should be permitted to stratify financial instruments into groups as part of identifying and assessing risks of material misstatement, and suggested reframing one of the required procedures to refer to the type of financial instruments. Paragraph .A1 is not intended to require auditors to obtain an understanding of each financial instrument one-by-one. The language has been revised to refer to financial instruments (plural) or type of financial instruments to make this clear. The new standard allows auditors, where appropriate, to stratify financial instruments into groups with similar characteristics for purposes of performing procedures to evaluate pricing information for financial instruments. In those situations, the auditor's stratification is to be based on his or her understanding of the nature of the financial instruments obtained under paragraph .A1.

Use of Pricing Information From Third Parties as Audit Evidence

See Paragraphs .A2–.A3

The proposal addressed pricing information from organizations that routinely provide uniform pricing information to users, generally on a subscription basis (pricing services), and brokers or dealers. The proposal provided that when the auditor uses pricing information from a third party to develop an independent expectation or tests pricing information provided by a third party used by management, the auditor should perform procedures to determine whether the pricing information provides sufficient appropriate audit evidence to respond to the risks of material misstatement.

Commenters on this topic were generally supportive of the proposed requirement. One commenter questioned whether the use of the word ''tests'' is appropriate in relation to pricing information provided by a third party used by management, because it might be inconsistent with other requirements in the proposed standard. The commenter requested clarification as to whether the use of the word ''tests'' in paragraph .A2 is intended to set out a different work effort than what AS 1105 would require to evaluate information from external sources.

Another commenter questioned whether receiving prices from a third-party service, in and of itself, amounts to using a service organization. The commenter claimed that, based solely on the criteria in paragraph .03 of AS 2601, *Consideration of an Entity's Use of a Service Organization,* without the context provided by AS 2503.11–.14, it is likely that third-party pricing services would often be considered service organizations, and that this outcome is not warranted given the relatively low risks involved. The same commenter asked about how paragraph .A3 would be applied to situations in which pricing services prepare pricing information upon client request, but follow uniform procedures that cause the preparer of the specific information to be unaware of the identity of the user, such that bias of the user would not be introduced.

[81] Additionally, centralized groups may periodically provide general information within the firm about a pricing service's controls and methodologies or general information on current market conditions for different types of securities. Such general information may inform engagement teams' risk assessments, to the extent that the information is reliable and relevant to their engagements. The activities of centralized groups to obtain and communicate such general information are different in nature from the engagement-specific services provided by the centralized groups, which are subject to supervision. Thus, it is important for firm quality control systems to have policies and procedures related to the accuracy of such general information from centralized groups.

Paragraphs .A2 and .A3 of the standard are adopted as proposed, except for the revision discussed below. Under the new standard, as with the proposal, when the auditor uses pricing information from a third party to develop an independent expectation or evaluates pricing information provided by a third party that is used by the company, the auditor is required to perform procedures to determine whether the pricing information provides sufficient appropriate evidence to respond to the risks of material misstatement. This approach focuses auditors on assessing the relevance and reliability of the pricing information regardless of whether it is obtained by the company or the auditor, which should lead to more consistency in practice. The new standard also includes a reminder that under AS 2301.09, the auditor should design audit procedures to obtain more persuasive audit evidence the higher the auditor's assessment of risk. This added reminder reinforces the principle that the required procedures are scalable based on the assessed risks of material misstatement. In general, fair values of financial instruments based on trades of identical financial instruments in an active market have a lower risk of material misstatement than fair values derived from observable trades of similar financial instruments or unobservable inputs. Thus, the necessary audit response would also differ. For example, for exchange-traded securities in active markets, quoted prices obtained from a stock exchange may provide sufficient appropriate evidence.

After consideration of comments, the word ''tests'' has been replaced with ''evaluates'' to clarify that the requirement is consistent with the work effort ordinarily required by AS 1105 when evaluating information from external sources.

As is the case under existing PCAOB standards, a pricing service would continue to be a service organization if the services it provides to a subscriber are part of the subscriber's information system over financial reporting.[82] In those instances, the auditor would apply the requirements of the new standard when performing substantive testing and look to the requirements of AS 2601 regarding his or her responsibilities for understanding and evaluating controls of the pricing service. The Board does not intend that the new standard would change practice in this area, given that the criteria for being a service organization under PCAOB standards have not changed.

The applicability of either Appendix A or the requirements for using the work of specialists to pricing services depends on the nature of the service provided and the characteristics of the instrument being valued. Appendix A applies when the auditor uses uniform pricing information from pricing services that is routinely provided to their users, generally on a subscription basis. This pricing information may be generated at various points in time and is available to all subscribers including both companies and audit firms. In general, financial instruments covered by these services tend to be those with more direct or indirect observable inputs.

As with the proposal, the new standard includes a footnote providing that, when a pricing service is engaged by a company or auditor to individually develop a price for a specific financial instrument not routinely priced for subscribers, the requirements in Appendix A of AS 1105 (company-engaged specialists) or AS 1210 (auditor-engaged specialists) apply, depending on who engaged the pricing service.[83] In general, financial instruments covered by these services have few direct or indirect observable market inputs (for example, because of an issuer's default, a delisting, or a major change in liquidity of the related asset class).

Using Pricing Information From Pricing Services

See Paragraph .A4

The proposal set forth a number of factors that affect the reliability of pricing information provided by a pricing service. These factors built on existing requirements for evaluating the reliability of audit evidence under AS 1105.

Some commenters suggested changes to or asked for clarification of the proposed factors for assessing the reliability of pricing information from pricing services. For example, some commenters asked for clarification or guidance regarding the required work effort to evaluate the pricing service, such as the nature and extent of procedures to evaluate the expertise and experience of the pricing service and whether the required procedures were to be applied separately for each financial instrument. Also, one commenter made specific suggestions regarding factors to be considered in evaluating the reliability and relevance of third-party pricing information. One commenter argued that the requirements of paragraphs .A4b, .A5c, and .A7 are unrealistic in some cases because auditors will not have access to the details of pricing service methodology, data, and assumptions. According to the commenter, requiring auditors to perform additional procedures in such cases without further guidance on procedures to be performed is unhelpful to the smaller companies who, in the commenter's view, are most likely to be unable to obtain an independent valuation, and to smaller audit firms without a pricing desk.

Additionally, some commenters requested guidance on how the auditor should determine that the pricing service, broker or dealer does not have a relationship with the company that could directly or indirectly or significantly influence the pricing service or broker or dealer. Other commenters suggested that auditors consider the results of their procedures regarding related parties under AS 2410 when considering the relationship of a pricing service or broker or dealer to the issuer. Other commenters suggested clarifying that a price challenge by management based on substantive information that causes the pricing service to change its price should not generally be deemed significant influence by management.

After consideration of the comments received, the new standard has been revised as follows:

- The requirements have been revised to clarify that the procedures in this paragraph are not required to be applied separately for each instrument (*e.g.,* through the use of phrases such as ''types of financial instruments'').
- The new standard includes a note[84] clarifying that procedures performed under AS 2410 should be taken into account in determining whether the pricing service has a relationship with the company by which company management has the ability to directly or indirectly control or significantly influence the pricing service as described in paragraph .A4c. The Board believes that pricing information from parties not considered to be related parties would ordinarily be more reliable than pricing information from sources determined to be related parties. The results of procedures performed under AS 2410 would provide information about whether the pricing service is a related party and, if so, the nature of relationships between the company and the pricing service. The

[82] *See* AS 2601.03.

[83] *See* Specialists Release, *supra note* 2.

[84] *See* first note to paragraph .A4 in AS 2501 (Revised).

nature and extent of further procedures that might be needed depend on the relevant circumstances. For example, if the results of AS 2410 procedures identified relationships between the company and pricing service, the auditor would need to evaluate whether the relationships gave company management the ability to directly or indirectly control or significantly influence the pricing service. Also, additional procedures might be needed to ascertain whether the pricing service was economically dependent on the company's business, if the pricing service was a smaller entity with few subscribers.

• The new standard also includes a note [85] clarifying that the existence of a process by which subscribers can challenge a pricing service's pricing information does not, by itself, mean that company management has the ability to directly or indirectly control or significantly influence that pricing service. The Board agrees with commenters that the existence of such a price challenge process ordinarily would not, on its own, suggest significant influence over the pricing service.

• The new standard also includes a note [86] indicating that if the auditor performs procedures to assess the reliability of pricing information provided by a pricing service at an interim date, the auditor should evaluate whether the pricing service has changed its valuation process relative to the types of financial instruments being valued, and, if so, the effect of such changes on the pricing information provided at period end. The Board understands that firms may perform procedures at various times during the year with respect to the methodology used by pricing service. The note reminds auditors that if the pricing service changes its process, *e.g.,* because of changes in market conditions, it is important for the auditor to evaluate the effect of such changes on the pricing information provided at period end to determine whether the pricing service continues to provide relevant evidence at that date.

As with the proposal, the new standard recognizes that pricing information that is routinely provided by a pricing service with experience and expertise relative to the type of financial instrument being valued is generally more reliable than a price developed by a pricing service that has limited or no experience. The Board agrees with the commenters that the number and financial industry experience levels of evaluators employed by the pricing service, the extent of informational resources that the pricing service provides to assist users in understanding its data and evaluation methodologies, and the pricing service's evaluation quality controls and price challenge processes, among other things, are relevant considerations when evaluating experience and expertise. However, the absence of lengthy experience pricing a particular instrument does not necessarily mean that the pricing service is incapable of providing relevant audit evidence. The evaluation of experience and expertise should be based on the relevant facts and circumstances including the need to obtain more persuasive audit evidence as the assessed risk of material misstatement increases.

Similar to the proposal, the new standard contemplates that pricing services use different methodologies to determine fair value. The Board understands, based on observation from oversight activities and outreach that many pricing services provide information to their subscribers about their methodology, which can be assessed to determine whether that methodology is in conformity with the applicable financial reporting framework. Under the new standard, the evaluation of pricing service methodology can be performed for groups of financial instruments, provided that certain conditions set forth in the Appendix are met. When an auditor is unable to obtain information about the methodology used by the pricing service to determine fair values of the types of financial instruments being valued, additional or alternative procedures to obtain the necessary evidence may include, for example, obtaining and evaluating pricing information from a different pricing source, obtaining evidence about the inputs used from public data about similar trades, or developing an independent expectation.

The new standard, as with the proposal, also provides that the procedures in Appendix A apply to pricing information obtained from pricing sources used by the company in their estimation process as well as from those obtained by the auditor for the purpose of developing an independent expectation.[87] This approach focuses on assessing the relevance and reliability of the pricing information obtained, rather than of the third party itself, and is better aligned with the assessed risks of material misstatement.

See Paragraph .A5

The proposal set forth certain factors that are important to the auditor's assessment of the relevance of pricing information provided by a pricing service.

Two commenters suggested that the description of the factors seemed to indicate that auditors need to understand how each financial instrument in the portfolio is valued individually, whereas in their view, auditors should be able to assess these factors based on the asset class and other characteristics.

The Board did not intend to require auditors to assess the factors set forth in this paragraph individually for each financial instrument in all cases, but rather, where applicable, to allow auditors to consider the factors for groups of financial instruments with similar characteristics and risks of material misstatement. Accordingly, the new standard has been revised to use the plural term ''financial instruments'' to clarify where a broader application is intended.

Like the proposal, the new standard provides direction on evaluating the relevance of pricing information provided by a pricing service, building on the requirements related to the relevance of audit evidence under AS 1105.[88] Under the new standard, the procedures to be performed generally depend on whether there is available information about trades in the same or similar securities.

Fair values based on quoted prices in active markets for identical financial instruments. The relevance of pricing information depends on the extent to which the information reflects market data as of the measurement date. Recent trades of identical financial instruments generally provide relevant audit evidence.

Fair values based on transactions of similar financial instruments. Only a fraction of the population of financial instruments is traded actively. For many financial instruments, the available audit evidence consists of market data for trades of similar financial

[85] *See* second note to paragraph .A4 in AS 2501 (Revised).

[86] *See* third note to paragraph .A4 in AS 2501 (Revised).

[87] An auditor's ability to use sampling methodologies and pricing information obtained from pricing sources used by the company may differ under other requirements, such as interpretive releases issued by the SEC. *See, e.g.,* SEC, *Codification of Financial Reporting Policies Section 404.03, Accounting, Valuation and Disclosure of Investment Securities,* Accounting Series Release No. 118 (Dec. 23, 1970), which provides requirements for audits of SEC-registered investment companies.

[88] *See* AS 1105.07.

instruments or trades of the identical instruments in an inactive market. This is the context in which the Board thinks it is most likely that procedures would be performed for groups of financial instruments of a similar nature (taking into account the matters in paragraph .A1) that are priced by the pricing service using the same process.

How a pricing service identifies and considers transactions comparable to the financial instrument being valued affects the relevance of the pricing information provided as audit evidence. When fair values are based on transactions of similar instruments, the new standard requires the auditor to perform additional audit procedures to evaluate the process used by the pricing service, including evaluating how transactions are identified, considered comparable, and used to value the types of financial instruments selected for testing, as discussed below.

No recent transactions have occurred for the same or similar financial instruments. When no recent transactions have occurred for either the financial instrument being valued or similar financial instruments, pricing services may develop prices using broker quotes or models. How a pricing service develops prices for these financial instruments, including whether the inputs used represent the assumptions that market participants would use when pricing the financial instruments, affects the relevance of the pricing information provided as audit evidence.

When pricing information from a pricing service indicates no recent trades for the financial instrument being valued or similar instruments, the new standard requires the auditor to perform additional audit procedures, including evaluating the appropriateness of the valuation method and the reasonableness of the observable and unobservable inputs used by the pricing service, as discussed below. These types of financial instruments would generally be valued individually.

See Paragraph .A6

The proposal provided that when the fair values are based on transactions of similar financial instruments, the auditor should perform additional audit procedures to evaluate the process used by the pricing service.

Some commenters requested clarification or guidance on the additional procedures to be performed when evaluating the process used by a pricing service, and guidance for situations in which the auditor is unable to perform the procedures. Another commenter asked for clarification regarding firm-level due diligence over pricing services, arguing that the standard as proposed would preclude the use of centralized pricing desks or firm-level due diligence procedures in evaluating a pricing service's process.

After consideration of comments received, this paragraph in the new standard has been revised in two respects. First, a phrase was added to clarify that the additional procedures to be performed relate to how transactions of similar instruments are identified, considered comparable, and used to value the types of financial instruments selected for testing.

Second, in light of previously discussed comments requesting clarification about the unit of testing, a note was added to paragraph .A6 of the new standard providing that that when a pricing service uses the same process to price a group of financial instruments, the audit procedures to evaluate the process can be performed for those financial instruments as a group, rather than for each instrument individually, if the financial instruments are similar in nature (taking into account the matters in paragraph .A1 of the new standard). The note was included with this paragraph because, as previously noted, these are the situations in which the Board believes auditors would be most likely to perform procedures at a group level. To address the use of group-level procedures in other contexts, a footnote was added to the note indicating that other procedures required by the Appendix may also be performed at a group level, provided that the conditions described in the note are met.

The new standard does not prescribe detailed procedures because the necessary audit procedures will vary in nature and extent depending on a number of factors, including the relevant risks and the process used by the pricing service (*e.g.,* matrix pricing, algorithm, or cash flow projections). For example, evaluating the reasonableness of a fair value based on the estimated cash flows from a pool of securitized mortgage loans would differ from evaluating an input derived from adjusted observable data. Procedures may include for example, evaluating how comparable transactions are selected and monitored or how matrix pricing is developed.

Additionally, the new standard does not prescribe who is to perform the procedures with respect to pricing services. It is the Board's understanding of current practice that, in large firms, firm-level due diligence over pricing services is typically performed centrally by a national-level pricing desk and not undertaken by each engagement team. The determination of whether the due diligence procedures over a pricing service should be performed by an engagement team or by the national office centralized group is at the discretion of the auditor, based on the relevant facts and circumstances. The Board does not intend that the new standard would give rise to a change in current practice in this area.

See Paragraph .A7

The proposal provided that when there are no recent transactions either for the financial instrument being valued or for similar financial instruments, the auditor should perform additional audit procedures, including evaluating the appropriateness of the valuation method and the reasonableness of observable and unobservable inputs used by the pricing service.

One commenter requested clarification or guidance on the additional procedures to be performed in circumstances when no recent transactions have occurred for either the financial instrument or similar financial instruments, expressing concern about smaller firms' ability to comply with the proposed requirement.

The requirement has been adopted substantially as proposed. Given the diverse nature of financial instruments that fall into this category, prescribing detailed procedures is impractical. The necessary audit procedures to evaluate the valuation methods and inputs will vary based on the relevant risks, type of inputs, and valuation methods involved.

Additionally, when an auditor is unable to obtain information from a pricing service about the method or inputs used to develop the fair value of a financial instrument when no recent transactions have occurred for either the financial instrument being valued or for similar financial instruments, the auditor is required under the new standard to perform additional procedures, such as obtaining and evaluating pricing information from a different pricing source, obtaining evidence about the inputs used from public data about similar trades, or developing an independent expectation.

Using Pricing Information From Multiple Pricing Services

See Paragraph .A8

The proposal provided direction for using pricing information from multiple pricing services to assess the valuation of financial instruments. Specifically, the proposal set forth certain conditions

under which less information is needed about the particular methods and inputs used by the individual pricing services when pricing information is obtained from multiple pricing services. In general, these factors relate to situations in which there is reasonably consistent pricing information available from several sources with ample observable inputs.

Commenters on this paragraph generally supported the underlying principle that less evidence may be needed when pricing information is obtained from multiple pricing services. Some commenters questioned one of the conditions set forth in the proposal, related to the methods used to value the financial instruments. Those commenters suggested that requiring the auditor to understand the valuation methods used was inconsistent with the concept of obtaining less information. One commenter suggested that sufficient appropriate audit evidence could be obtained solely on the basis of two of the conditions: That the instruments are routinely priced by several pricing services, and the prices obtained are reasonably consistent. Some commenters asked for clarification on whether the conditions can be applied on a group basis or would be required to be applied to individual financial instruments, expressing concern that the latter approach would lead to excessive work.

Other commenters sought clarification or offered suggestions regarding the wording of some of the conditions set forth in the proposal. One commenter suggested consistently using the terms ''multiple'' and ''several'' in relation to pricing services. Another commenter asked for clarification of the meaning of the phrase ''reasonably consistent between or among the pricing services from which pricing information is obtained,'' specifically, whether the phrase referred to consistent over a period of time or as of a point in time.

Another commenter suggested a different set of conditions for when less evidence may be needed. In that commenter's view, the auditor would have obtained sufficient appropriate audit evidence with respect to the valuation of a financial instrument if: (i) The auditor assesses the financial instrument to have ''lower estimation uncertainty'' (*e.g.,* based on the asset class and other characteristics of the financial instrument), (ii) the auditor obtains multiple prices from pricing services for the financial instrument, (iii) those pricing services routinely price that type of financial instrument, (iv) the prices obtained are reasonably consistent, and (v) the auditor has obtained an understanding of the pricing services' methodologies at an asset class level of the financial instrument.

Another commenter suggested that the standard should require taking the average of a reasonable number of available prices, excluding outliers, and that procedures such as those outlined in paragraph .A4 should be performed for at least one pricing source. The same commenter also requested clarification of whether and how pricing sources like Google and Yahoo Finance may be used.

After consideration of the comments received, paragraph .A8 in the new standard has been revised to remove the reference to valuation methods and to make other wording changes that, along with the footnote to paragraph .A6, clarify that procedures under this paragraph can be performed at a group level, provided that the conditions described in the note to paragraph .A6 are met.

Regarding the comment on usage of the terms ''multiple'' and ''several'' in Paragraph .A8, the term ''multiple'' refers to more than one pricing service. The term ''several'' is used to clarify that, under the condition in paragraph .A8, pricing information is to be obtained from more than two pricing services, all of which routinely price the instruments.

The new standard includes the condition that prices obtained are reasonably consistent across pricing services (as of a relevant point in time), taking into account the nature and characteristics of the financial instruments being valued and market conditions. For example, the range of prices that would be reasonably consistent would be narrower for a type of financial instrument with a number of observable market inputs, such as recent trades of identical or substantially similar instruments, than for a type of instrument with relatively few observable market inputs.

The suggestion to compute averages of prices from different sources was not included in the new standard because averages could obscure a wide range of price variation and no consideration would be given to whether certain prices are more indicative of the fair value of the instrument than others. The Board considered the other factors suggested by commenters and determined that those factors generally were similar in nature to requirements in Appendix A. For example, the suggested factor based on lower estimation uncertainty is, in the Board's view, subsumed in the other listed factors.

Websites that publish, for the general public, prices for exchange-traded securities in active markets are not pricing services as described in the new standard, and the auditor's responsibility for information from those sources is set forth in paragraph .A2 of the new standard. Evaluating whether securities prices from these websites provide sufficient appropriate evidence includes evaluating whether the websites obtain the prices directly from original sources (*e.g.,* stock exchanges).

Using Pricing Information From a Broker or Dealer

See Paragraph .A9

The proposal set forth certain factors that affect the relevance and reliability of the evidence provided by a quote from a broker or dealer. In addition, the proposal included an amendment to AS 1105.08 to more broadly address restrictions, limitations, and disclaimers in audit evidence from third parties.

Some commenters asked for guidance on the proposed requirement to evaluate the relationship of the source of the pricing information with the company, including the factors to be evaluated. Another commenter suggested that the standard state that the list of factors affecting relevance and reliability is not all inclusive, although the commenter did not suggest additional factors to be included. One commenter asserted that the proposal would result in a significant change in practice, and suggested that the Board should consider whether there were lower risk circumstances for which a broker quote may be sufficient appropriate audit evidence without meeting all criteria. Another commenter noted that the first sentence of the paragraph reads as though it applies only when the auditor tests the company's price based on a quote from a broker or dealer. The commenter suggested that the proposal should clarify whether the requirement would also apply when the auditor develops an independent expectation using a broker quote.

The new standard has been revised to include a note providing that auditors should take into account the results of the procedures performed under AS 2410, *Related Parties,* when determining whether the broker or dealer has a relationship with the company by which company management has the ability to directly or indirectly control or significantly influence the broker or dealer. Otherwise, the requirements in the new standard have been adopted substantially as proposed. The Board believes that the factors set forth in the

standard provide sufficient direction to the auditor to evaluate the relevance and reliability of the evidence provided by the quote, in order to determine whether the quote provides sufficient appropriate evidence in light of the risks of material misstatement.

The requirements in the proposal were framed in terms of when the company's fair value measurement is based on a quote from a broker or dealer because the Board understands that this is the situation typically encountered in practice. However, the factors set forth in the standard relate to the relevance and reliability of audit evidence from those quotes, and thus are equally applicable to those less common situations when the auditor uses a broker quote to develop an independent expectation. The requirement in the new standard has been revised to remove the reference to the ''company's'' measurement.

If the broker quote does not provide sufficient appropriate evidence, the auditor would be required to perform procedures to obtain relevant and reliable pricing information from another source (for example, obtaining a quote from a different broker or dealer, obtaining pricing information from a pricing service, or developing an independent expectation).

Unobservable Inputs

See Paragraph .A10

The proposal set forth a requirement for the auditor to obtain an understanding of how unobservable inputs were determined and to evaluate the reasonableness of those inputs. This understanding would involve, among other things, taking into account the assumptions that market participants would use when pricing the financial instrument, including assumptions about risk, and how the company determined its fair value measurement, including whether it appropriately considered available information. For example, if management adjusts interest rates, credit spread, or yield curves used to develop a fair value measurement, the auditor would be required to evaluate whether the adjustments reflect the assumptions that market participants would ordinarily use when pricing that type of financial instrument.

The two commenters on this paragraph expressed opposing views. One commenter supported the requirement while the other commenter suggested deleting the paragraph.

The requirement is adopted as proposed. By providing factors that the auditor takes into account, the new standard provides additional direction in an area that is inherently subjective and judgmental in nature and therefore poses a higher risk of material misstatement.

Additional Amendments to PCAOB Auditing Standards

The Board has also adopted amendments to several of its existing auditing standards to conform to the new standard, as reflected in Exhibit A to the SEC Filing Form 19b–4, available on the Board's website at *https://pcaobus.org/Rulemaking/Pages/docket-043-auditing-accounting-estimates-fair-value-measurements.aspx* and at the Commission's Public Reference Room. Significant amendments are described below.[89]

Amendments to AS 1015, Due Professional Care in the Performance of Work

The proposed amendments to AS 1015.11 included two changes to the discussion of reasonable assurance when auditing accounting estimates (1) clarifying that many (although not all) accounting presentations contain accounting estimates, the measurement of which is inherently uncertain and depends on the outcome of future events; and (2) providing that, in auditing accounting estimates, the auditor considers information through the date of the auditor's report, which under PCAOB standards is a date no earlier than the date on which the auditor has obtained sufficient appropriate evidence.[90]

One commenter advocated for including language in AS 1015 that explains inherent limitations that an auditor may face with regard to identifying and evaluating management bias in accounting estimates. In this commenter's view, financial reporting frameworks do not distinguish between reasonable judgment latitude, subconscious management bias, and willful biased manipulation.

The amendments are adopted substantially as proposed. The Board acknowledges that various circumstances can give rise to management bias and that, given the subjective assumptions and uncertainty inherent in many estimates, bias cannot be eliminated entirely. The new standard, as well as other PCAOB standards, address the auditor's responsibilities for evaluating potential management bias in accounting estimates and its effect on financial statements.

Amendments to AS 1105, Audit Evidence

The proposed amendment to AS 1105.08 would require the auditor to evaluate the effect of any restrictions, limitations, or disclaimers imposed by a third party on the reliability of evidence provided by that party.

A few commenters sought guidance on how to apply the requirement, including how the auditor would determine if the evidence was sufficiently reliable.

The amendment to AS 1105.08 is adopted as proposed. Third-party information often contains restrictions, limitations, or disclaimers as to the use of such information and its conformity with the applicable financial reporting framework. The nature of the restriction, limitation, or disclaimer and how the information provided is being used would inform the auditor's assessment of whether the evidence provided by the third-party information is sufficiently reliable, or whether additional procedures need to be performed (and, if so, the nature and extent of such procedures). For example, language in a business valuation disclaiming responsibility for company-provided data used to prepare the valuation may not affect the reliability of that valuation as long as the auditor performs audit procedures to test company-provided data used.

Appendix B, Audit Evidence Regarding Valuation of Investments Based on Investee Financial Results

The proposal set forth amendments to add Appendix A, *Audit Evidence Regarding Valuation of Investments Based on Investee Financial Condition or Operating Results,* to AS 1105. The proposed amendments would have retained and updated certain requirements from the derivatives standard for situations in which the valuation of an investment selected for testing is based on the investee's financial condition or operating results, including certain investments accounted for by the equity method and investments accounted for by the cost method for which there is a risk of material misstatement regarding impairment.

Commenters expressed concerns that the updated requirements in the proposal were written in a manner that was overly prescriptive, impracticable, burdensome, or inconsistent with the application of a risk-based approach. For example, commenters asserted that certain procedures involving interaction

[89] The discussion that follows excludes conforming amendments that make reference to the new standard.

[90] *See* paragraph .01 of AS 3110, *Dating of the Independent Auditor's Report.*

with investee management or the investee auditor were not practicable because the investor company's auditor might not have access to those parties. Commenters also sought clarification on the intent and application of several procedures set forth in the appendix.

After consideration of comments, the Board has decided to retain the existing requirements from the derivatives standard, with only limited conforming changes. The requirements are set forth as Appendix B, *Audit Evidence Regarding Valuation of Investments Based on Investee Financial Results,* to AS 1105. The intent of updating the requirements from the derivatives standard was to better align the required procedures with the risk assessment standards, not to substantively change audit practice in this area. Retaining the language of the existing requirements is consistent with the intention not to change audit practice. The requirements of the risk assessment standards continue to be applicable to investments audited under Appendix B of AS 1105.

Amendment to AS 1205, Part of the Audit Performed by Other Independent Auditors

AS 1205.14 discusses the applicability of that standard to situations where the company being audited has an investment accounted for under the equity method or the cost method and the investee is audited by another auditor. In consideration of comments on the appendix to AS 1105 discussed above, the Board is also amending AS 1205 to help auditors determine the appropriate standard to apply in those situations. Specifically, the amendment provides that the auditor should look to the requirements of Appendix B of AS 1105 for situations in which the valuation of an investment selected for testing is based on the investee's financial results and neither AS 1201 nor AS 1205 applies. The amendment clarifies that Appendix B of AS 1105 applies when AS 1205, by its terms, does not apply and the investee auditor is not supervised under AS 1201.

Amendments to AS 2110, Identifying and Assessing Risks of Material Misstatement

The proposal included a number of amendments to AS 2110 related to:

- Obtaining an understanding of the processes used to develop accounting estimates and evaluating the use of service organizations that are part of a company's information system;
- Discussing how the financial statements could be manipulated through management bias; and
- Assessing additional risk factors specifically for accounts and disclosures involving accounting estimates.

One commenter suggested that requirements related to identifying and assessing risks of material misstatements in accounting estimates should be in one standard (*i.e.,* new standard) rather than amending the various risk assessment standards. In contrast, another commenter expressed support for amending other PCAOB standards as a result of a new standard on accounting estimates.

The amendments to AS 2110, described in more detail below, are adopted substantially as proposed.

Information and Communication

The proposed amendment to AS 2110.28 would require the auditor, as part of obtaining an understanding of a company's information system and related business processes, to obtain an understanding of the processes used to develop accounting estimates, including (1) the methods used, which may include models; (2) the data and assumptions used, including the source from which they are derived; and (3) the extent to which the company uses specialists or other third parties, including the nature of the service provided and the extent to which the third parties use company data and assumptions.

The proposed amendment also included a note emphasizing that the requirements in AS 2601 with respect to the auditor's responsibilities for obtaining an understanding of controls at a service organization would apply when the company uses a service organization that is part of the company's information system over financial reporting. In addition, for critical accounting estimates, the proposed amendment referenced a requirement in the proposed standard for the auditor to obtain an understanding of how management analyzed the sensitivity of its significant assumptions to change, based on other reasonably likely outcomes that would have a material effect.

One commenter suggested a requirement for the auditor to obtain an understanding of how management identifies and addresses the risk of management bias. Another commenter suggested adding language similar to the existing note on evaluation of risk and controls within the information system to clarify that a service organization is part of the evaluation, not a separate consideration.

In light of related amendments to AS 2110 in the Board's rulemaking on the auditor's use of specialists, the amendment to AS 2110.28 was revised to clarify that the auditor's understanding of the processes used to develop accounting estimates includes the extent to which the company uses third parties other than specialists.[91]

The amendment emphasizes elements of assessing the risks of material misstatement that are specifically relevant to accounting estimates, recognizing that the methods, data and assumptions used by the company in its process to develop accounting estimates, including how they are selected and applied, drive the risk associated with the estimate. In addition, as part of obtaining an understanding the information system, the amendment reminds the auditor to consider whether the requirements of AS 2601 are applicable to the third party used by the company in developing an accounting estimate.

A separate requirement for the auditor to obtain an understanding of how management identifies and addresses the risk of management bias was not necessary as the new standard requires the auditor to evaluate management bias and its effect on financial statements as part of responding to risks of material misstatements in accounting estimates.

Comparison With Standards of Other Standard Setters

Similar to this amendment, ISA 540 Revised sets forth requirements to obtain an understanding of how management identifies the relevant methods, assumptions or sources of data, and the need for changes in them, that are appropriate in the context of the applicable financial reporting framework, including how management (a) selects or designs, and applies, the methods used, including the use of models; (b) selects the assumptions to be used, including consideration of alternatives, and identifies significant assumptions; and (c) selects the data to be used.

Discussion of the Potential for Material Misstatement Due to Fraud

AS 2110.52 requires the key engagement team members to discuss the potential for material misstatement due to fraud. The proposed amendment to AS 2110.52 would require the auditor to include, as part of this discussion, how the financial statements could be manipulated through management bias in accounting estimates in significant accounts and disclosures.

[91] *See* the Specialists Release, *supra* note 2, for a discussion of auditors' responsibilities with respect to specialists.

Commenters that addressed this topic were generally supportive of the amendment but provided some suggestions for refinements. One commenter suggested that the standard include discussion of different types of bias. Another commenter also indicated that, in their view, the consideration of bias may be better placed in paragraphs .49–.51 of AS 2110 as part of the overall discussion of the susceptibility of the financial statements to material misstatement. Further, in one commenter's view, the requirement implied that the auditor should seek out bias in every accounting estimate. This commenter suggested the language be revised to focus on estimates that are ''more susceptible'' to material misstatement from management bias or where management bias is ''more likely to'' result in a material misstatement.

The amendment to AS 2110.52 is adopted as proposed. Contrary to the view of one commenter, the requirement does not direct the auditor to seek out bias in each estimate. Rather, by including the potential for management bias (regardless of type) as part of the engagement team's overall brainstorming discussion, the requirement focuses the auditor's attention on a risk that is particularly relevant to accounting estimates in significant accounts and disclosures. In addition, including the requirement as part of paragraph .52 provides additional context as to the nature of the discussion about susceptibility of the company's financial statements to material misstatement due to fraud.

Identifying Significant Accounts and Disclosures and Their Relevant Assertions

AS 2110.60 provides risk factors relevant to the identification of significant accounts and disclosures and their relevant assertions. The proposed amendment to AS 2110.60 provided the auditor with additional risk factors that are relevant to identifying significant accounts and disclosures involving accounting estimates, including (1) the degree of uncertainty associated with the future occurrence or outcome of events and conditions underlying the assumptions; (2) the complexity of the process for developing the accounting estimate; (3) the number and complexity of significant assumptions associated with the process; (4) the degree of subjectivity associated with significant assumptions (for example, because of significant changes in the related events and conditions or a lack of available observable inputs); and (5) if forecasts are important to the estimate, the length of the forecast period and degree of uncertainty regarding trends affecting the forecast.

One commenter suggested including additional factors such as (1) the extent to which the process involves specialized skills or knowledge; (2) the complexity of the data used for developing the accounting estimate, including the difficulty, if any, in obtaining relevant and reliable data and maintaining the integrity of the data; and (3) the potential for management bias. Another commenter questioned whether the Board intends management bias to extend beyond a fraud risk, suggesting the requirement highlight management bias as a specific risk factor. A different commenter asked for clarification on how instances of high measurement uncertainty are contemplated.

One commenter sought clarity on whether the above risk factors are intended to be considered when identifying and assessing the risks of material misstatement related to accounting estimates (in addition to identifying significant accounts and disclosures).

The amendment to AS 2110.60 is adopted as proposed. The additional risk factors included in the amendment describe those characteristics and conditions that are associated with accounting estimates and that can affect the auditor's determination of the likely sources of potential misstatement. While the factors assist the auditor in identifying significant accounts and disclosures and their relevant assertions, these factors also prompt auditors to appropriately assess the associated risks in the related accounts and disclosures and develop appropriate audit responses. As discussed above, AS 2810 requires the auditor to evaluate management bias and its effect on the financial statements. In circumstances where management bias gives rise to a fraud risk, the auditor looks to the requirements of AS 2301 to respond to those risks.

The factors were not expanded to include extent of specialized skills used, potential for management bias, or complexity of the data used, as suggested by one commenter. These characteristics are already captured within the factors presented in the amendment or elsewhere in the risk assessment standards. For example, assessing the complexity of the process for developing an accounting estimate would necessarily include understanding the data and assumptions that are used within the process. Further, as discussed above, the new standard and related amendments recognize that the degree of uncertainty associated with some estimates affect the assessed risks and direct auditors to plan and perform audit procedures to respond to those risks.

Amendments to AS 2301, the Auditor's Responses to the Risks of Material Misstatement

The proposal included a note to AS 2301.36 emphasizing that performing substantive procedures for the relevant assertions of significant accounts and disclosures involves testing whether the significant accounts and disclosures are in conformity with the applicable financial reporting framework.

Commenters did not express concerns with the proposed amendment. However, some commenters called for additional guidance on identifying and testing relevant controls over accounting estimates. For example, one commenter suggested guidance related to auditor consideration of management controls over selection and supervision of a company specialist. Another commenter suggested additional guidance on identification and testing of relevant controls, and identification and response to risks of material misstatement due to fraud in relation to auditing estimates. This commenter expressed the view that testing the operating effectiveness of controls, including controls over complex models or methods used, can be critical in auditing accounting estimates and, in some circumstances, may be required (*e.g.,* in situations in which substantive procedures alone do not provide sufficient appropriate evidence).

The auditor's responsibilities for testing controls are addressed in AS 2110, AS 2301, and AS 2201, *An Audit of Internal Control Over Financial Reporting That Is Integrated with An Audit of Financial Statements.* These requirements would apply to controls over accounting estimates. Nonetheless, in the Board's view, providing additional direction on the need to test controls related to accounting estimates could help promote an appropriate audit response in cases where only a financial statement audit is performed. Accordingly, after consideration of comments, the Board is amending AS 2301.17 to include a note reminding auditors that for certain accounting estimates involving complex models or processes, it might be impossible to design effective substantive tests that, by themselves, would provide sufficient appropriate evidence regarding relevant assertions.

The amendment to AS 2301.36 is also adopted as proposed.

Amendments to AS 2401, Consideration of Fraud in a Financial Statement Audit

To better align requirements with the scope of the proposed standard, the proposed amendment to AS 2401.64 would have deleted reference to ''significant accounting estimates reflected in the financial statements'' and clarified that, when an auditor performs a retrospective review, the review should be performed for accounting estimates in significant accounts and disclosures. The proposed amendment would also have clarified that the retrospective review involves a comparison of the prior year's estimates to actual results, if any, to determine whether management's judgments and assumptions relating to the estimates indicate a possible bias on the part of management.

Some commenters expressed concern that the proposed amendment would expand the population of accounting estimates subject to retrospective review, resulting in excessive work. Other commenters suggested either including the requirement to perform a retrospective review within the proposed standard, or providing a clearer linkage between the proposed standard and the requirements for retrospective review in AS 2401. One commenter suggested a requirement to evaluate the accuracy of management's prior estimates going back a minimum of three years.

After consideration of comments, the amendment to AS 2401.64 was revised to further clarify that the accounting estimates selected for testing should be those for which there is an assessed fraud risk. The scope of the retrospective review, as amended, is better aligned with the new standard and focuses the auditor on accounting estimates already identified through the risk assessment process as being susceptible to material misstatement due to fraud.

A separate requirement for performing a retrospective review is not necessary in the new standard as the requirement in AS 2401 would achieve the same objective. Further, for some estimates, the outcome of the estimate may not be known within a reporting period to facilitate such a review. Similarly, requiring a review over multi-year period would not be feasible for some estimates. Obtaining an understanding of the company's process for developing an estimate would necessarily provide information about the company's ability to make the estimate. In addition, the new standard requires the auditor to evaluate whether the company has a reasonable basis for significant assumptions used in accounting estimates.

Comparison With Standards of Other Standard Setters

ISA 540 Revised requires the auditor to review the outcome of previous accounting estimates, or, where applicable, their subsequent re-estimation to assist in identifying and assessing the risks of material misstatement in the current period. The auditor shall take into account the characteristics of the accounting estimates in determining the nature and extent of that review. The review is not intended to call into question judgments about previous period accounting estimates that were appropriate based on the information available at the time they were made.

AU–C Section 540 includes a similar requirement.

Amendment to AS 2805, Management Representations

The proposed amendment to AS 2805.06 would require the auditor to obtain specific representations related to accounting estimates in connection with an audit of financial statements presented in conformity with generally accepted accounting principles. Consistent with the fair value standard, the auditor would obtain representations about the appropriateness of the methods, the consistency in application, the accuracy and completeness of data, and the reasonableness of significant assumptions used by the company in developing accounting estimates. Commenters did not address the requirement and the Board has adopted this amendment as proposed.

Amendment To Rescind AI 16, Auditing Accounting Estimates: Auditing Interpretations of AS 2501

As discussed in the proposal, the Board is rescinding AI 16. That interpretation addresses performance and reporting guidance related to fair value disclosures, primarily voluntary disclosures including fair value balance sheets. Fair value disclosure requirements in the accounting standards have changed since the issuance of this interpretation, and fair value balance sheets covered by the interpretation are rarely included in issuer financial statements. Accordingly, this interpretation is unnecessary. Commenters did not object to rescinding this interpretation.

Effective Date

The Board determined that AS 2501 (Revised) and related amendments will take effect, subject to approval by the SEC, for audits of financial statements for fiscal years ending on or after December 15, 2020.

The Board sought comment on the amount of time auditors would need before the proposed standard and amendments would become effective, if adopted by the Board and approved by the SEC. A number of commenters recommended that the Board provide an effective date two years after SEC approval, which they asserted would give firms the necessary time to update firm methodologies, develop and implement training, and ensure effective quality control process to support implementation. Some commenters supported an earlier effective date, with one commenter indicating that the proposed standard should be effective contemporaneously with the implementation of the new accounting standard on credit losses. One commenter also suggested a phased in approach for EGCs. Two commenters noted that the proposal should be effective at the same time as any amendments related to the auditor's use of the work of specialists.

While recognizing other implementation efforts, the effective date determined by the Board is designed to provide auditors with a reasonable period of time to implement the new standard and related amendments, without unduly delaying the intended benefits resulting from these improvements to PCAOB standards. The effective date is also aligned with the effective date of the amendments being adopted in the Specialists Release.

D. Economic Considerations and Application to Audits of Emerging Growth Companies

The Board is mindful of the economic impacts of its standard setting. The economic analysis describes the baseline for evaluating the economic impacts of the new standard, analyzes the need for the changes adopted by the Board, and discusses potential economic impacts of the new standard and related amendments, including the potential benefits, costs, and unintended consequences. The analysis also discusses the alternatives considered. There are limited data and research findings available to estimate quantitatively the economic impacts of discrete changes to auditing standards in this area, and furthermore, no additional data was identified by commenters that would allow the Board to generally quantify the expected economic impacts (including expected incremental costs related to the

proposal) on audit firms or companies. Accordingly, the Board's discussion of the economic impact is qualitative in nature.

The Board sought information relevant to economic consequences over the course of the rulemaking. The Board has considered all the comments received and has developed an economic analysis that evaluates the potential benefits and costs of the final requirements and facilitates comparison to alternative actions considered.

Commenters who discussed the economic analysis in the Board's proposal provided a range of views. A number of commenters agreed with the economic analysis relating to the need for the proposal. Some commenters agreed with the potential benefits outlined in the proposal, including an increase in investor confidence and consistency in the application of requirements. At the same time, other commenters cautioned against raising expectations among investors about the impact of the proposal on audit quality by noting various inherent limitations that the auditor faces in auditing estimates. A number of commenters suggested that additional audit work required by the new standard would increase cost without necessarily improving audit quality related to auditing estimates. In addition, some commenters expressed concern that some of the increase in cost might be passed through to companies in the form of increased audit fees.

Baseline

Section C above discusses the Board's current requirements for auditing accounting estimates, including fair value measurements, and current practices in the application of those requirements. This section expands on the current practices of the profession and currently observed patterns.

As discussed in Section C, the PCAOB has historically observed numerous deficiencies in auditing accounting estimates. PCAOB staff gathered data from reported inspection findings related to issuer audits between 2008 and 2016 for the eight accounting firms that have been inspected every year since the PCAOB's inspection program began.[92] The chart below shows the number of audits with deficiencies related to the accounting estimates standard and fair value standard based on the 2008–2016 reported inspection findings [93] for those eight firms.[94]

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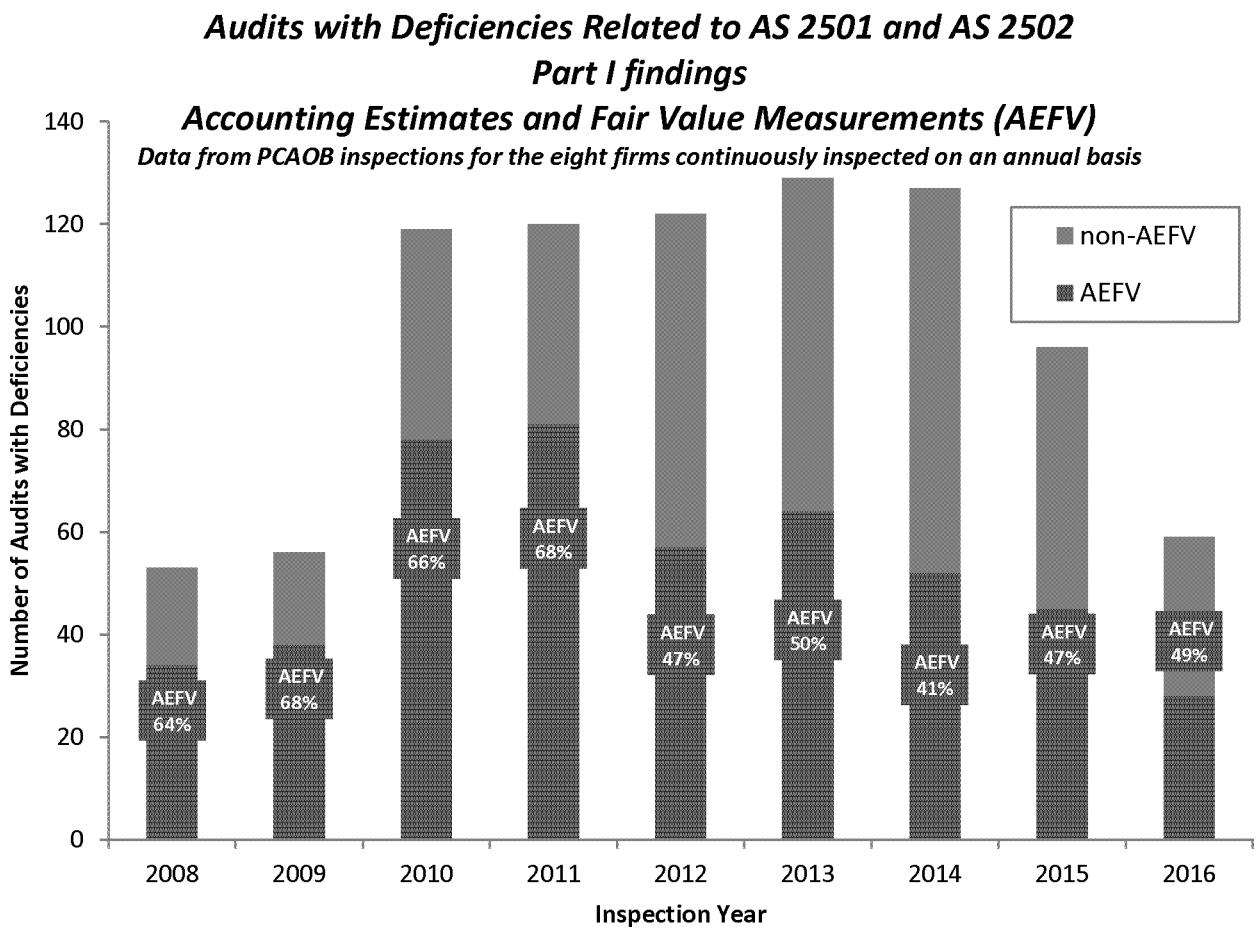

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[92] The eight accounting firms are BDO USA, LLP; Crowe Horwath LLP; Deloitte & Touche LLP; Ernst & Young LLP; Grant Thornton LLP; KPMG LLP; PricewaterhouseCoopers, LLP; and RSM US LLP (formerly McGladrey, LLP).

[93] Deficiencies related to the derivatives standard were infrequent over the inspection period reviewed, and therefore considered insignificant for purposes of this analysis.

[94] The chart identifies the audits with deficiencies reported in the public portion of inspection reports. It shows the relative frequency of audits with deficiencies citing the existing accounting estimates standard or the existing fair value standard compared to the total audits with deficiencies for that year. For example, in inspection year 2010, 66% of all audits with deficiencies had at least one deficiency related to the accounting estimates standard or the fair value standard (total 2016 reported inspection findings are based on preliminary results).

Audits that had deficiencies related to the estimates standards represent a significant number of total audits with deficiencies (including deficiencies in audits of internal control over financial reporting) although the overall percentage has declined since 2011.[95] This is consistent with a recent PCAOB Staff Inspection Brief, which observed that during the 2016 inspection cycle, inspections staff continued to find high numbers of deficiencies and ''identify instances in which auditors did not fully understand how the issuer's estimates were developed or did not sufficiently test the significant inputs and evaluate the significant assumptions used by management.'' [96] Given the pattern of the data, one can conclude that, although deficiencies were increasing in the early periods, more recently they have declined. Despite this recent decline, the deficiencies have remained high over an extended period.

Accounting estimates are prevalent and significant in financial reporting, as confirmed by academic research and supported with empirical evidence. For example, Griffith et al. note that complex accounting estimates, including fair value measurements, impairments, and valuation allowances, are increasingly important to financial statements.[97] In addition, some studies provide evidence on the significance of accounting estimates by using large samples of critical accounting policy (''CAP'') disclosures and critical accounting estimate (''CAE'') disclosures.[98] Levine and Smith, using a large sample of CAP disclosures from annual filings, estimate that on average issuers disclose 6.46 policies as critical, with a median of 6.[99] Their analysis shows that issuers most frequently disclose policies relating to fair value measurements and estimates.[100] Glendening, in his 2017 study, uses a large sample of CAE disclosures data covering 2002–2010 and finds that on average about half of the issuers in his sample disclose such estimates every year, with the disclosure rate increasing over time.[101] In Glendening's sample, on average, firms disclose between two and three critical accounting estimates. Also, commenters generally agreed with the characterization that financial reporting has continued to require more accounting estimates that involve complex processes and have a significant impact on companies' operating results and financial positions.

Academic research also confirms the challenges auditors face in auditing estimates, including fair value measurements. Griffith et al., in providing a brief summary of the relevant literature, note that, while accounting estimates are increasingly important to financial statements, auditors experience ''difficulty in auditing complex estimates, suggesting that audit quality may be low in this area.'' [102] Martin, Rich, and Wilks attribute much of the difficulty in auditing fair value measurements to estimation based on future conditions and events and also note that auditors face many of the same challenges when auditing other accounting estimates.[103] Cannon and Bedard, using a survey of auditors, find that features such as ''management assumptions, complexity, subjectivity, proprietary valuations, and a lack of verifiable data . . . all contribute to the challenges in auditing [fair value measurements].'' [104] Other studies point to the lack of sufficient knowledge on the part of auditor or management as a contributing factor to auditing challenges. Griffith et al. report that ''[i]nsufficient valuation knowledge is problematic in that relatively inexperienced auditors, who also likely lack knowledge of how their work fits into the bigger picture, perform many audit steps, even difficult ones such as preparation of independent estimates.'' [105] Glover et al. find similar issues with expertise from management's side, with results that indicate that a majority of audit partners participating in their survey reported encountering problems with ''management's lack of valuation process knowledge.'' [106]

In addition to the findings regarding auditing challenges, academic research provides evidence on auditors' use of the available approaches for testing an accounting estimate. A study by Griffith et al. suggests that, among the three approaches available under current standards, auditors primarily choose to test management's process, rather than use subsequent events or develop an independent estimate.[107] In doing so, some auditors tend to verify management's assertions on a piecemeal basis; the authors of the study argue that this may result in overreliance on management's process rather than a critical analysis of the estimate. Another study by Glover et al., however, finds that auditors primarily use the approach of testing management's process when auditing lower-risk or typical complex estimates and are more likely to use a combination of substantive approaches as the complexity and associated risk of the estimate increase.[108]

[95] PCAOB inspection reports for the same eight firms covering the inspection period from 2004 to 2009 similarly found deficiencies in auditing fair value measurements, including impairments and other estimates. *See also* Bryan Church and Lori Shefchik, *PCAOB Inspections and Large Accounting Firms,* 26 Accounting Horizons 43 (2012).

[96] *See* PCAOB Staff Inspection Brief, *Preview of Observations from 2016 Inspections of Auditors of Issuers,* at 7. For a more detailed discussion of observations from audit inspections, *see* Section C.

[97] *See* Emily Griffith, Jacqueline S. Hammersley, Kathryn Kadous, and Donald Young, *Auditor Mindsets and Audits of Complex Estimates,* 53 Journal of Accounting Research 49 (2015).

[98] *Disclosure in Management's Discussion and Analysis about the Application of Critical Accounting Policies,* Release No. 33–8098 (May 10, 2002), 67 FR 35619 (May 20, 2002); and *Commission Guidance Regarding Management's Discussion and Analysis of Financial Condition and Results of Operations,* Release No. 33–8350.

[99] *See* Carolyn B. Levine and Michael J. Smith, *Critical Accounting Policy Disclosures,* 26 Journal of Accounting, Auditing & Finance 39, 48 (2011).

[100] *Id.* at 49–50.

[101] *See* Matthew Glendening, *Critical Accounting Estimate Disclosures and the Predictive Value of Earnings,* 31 (4) Accounting Horizons 1, 12 (2017).

[102] *See* Griffith et al., *Auditor Mindsets and Audits of Complex Estimates* 50.

[103] *See* Roger D. Martin, Jay S. Rich, and T. Jeffrey Wilks, *Auditing Fair Value Measurements: A Synthesis of Relevant Research,* 20 Accounting Horizons 287, 289 (2006).

[104] *See* Nathan Cannon and Jean C. Bedard, *Auditing Challenging Fair Value Measurements: Evidence from the Field,* 92 The Accounting Review 81, 82 (2017).

[105] *See* Emily Griffith, Jacqueline S. Hammersley, and Kathryn Kadous, *Audits of Complex Estimates as Verification of Management Numbers: How Institutional Pressures Shape Practice,* 32 Contemporary Accounting Research 833, 836 (2015).

[106] *See* Steven M. Glover, Mark H. Taylor, and Yi-Jing Wu, *Current Practices and Challenges in Auditing Fair Value Measurements and Complex Estimates: Implications for Auditing Standards and the Academy,* 36 Auditing: A Journal of Practice & Theory 63, 82 (2017).

[107] *See* Griffith et al., *Audits of Complex Estimates as Verification of Management Numbers: How Institutional Pressures Shape Practice* 841.

[108] *See* Glover et al., *Current Practices and Challenges in Auditing Fair Value Measurements and Complex Estimates: Implications for Auditing Standards and the Academy* 65. *See also* Cannon and Bedard, *Auditing Challenging Fair Value Measurements: Evidence from the Field* 81, 82–83. Glover et al. provide additional insight regarding auditor's selection of substantive testing approaches, specifically, the use of developing independent estimates and reviewing subsequent events and transactions. Glover et al., *Current Practices and Challenges in Auditing Fair Value Measurements and Complex Estimates: Implications for Auditing Standards and the Academy* 69, 71. The study shows that, in developing independent estimates, availability of independent data, availability of verifiable data, and the reliability of management's estimates are the most commonly cited factors that drive auditors' decisions to use management's versus the audit team's assumptions. Regarding the use of reviewing subsequent events and transactions, over 96% of the participating auditors in the study report using the most recent trades that have occurred in the market to support the fair values of recorded securities.

Need for the Rulemaking

From an economic perspective, the primary reasons to improve PCAOB standards for auditing accounting estimates are as follows:

- The subjective assumptions and measurement uncertainty of accounting estimates make them susceptible to potential management bias. The Board believes that PCAOB standards related to auditing accounting estimates will be improved by emphasizing the application of professional skepticism, including addressing potential management bias. Although the risk assessment standards and certain other PCAOB standards address professional skepticism and management bias, the estimates standards provide little or no specific direction on how to address those topics in the context of auditing accounting estimates.
- Existing requirements do not provide specific direction about how to evaluate the relevance and reliability of pricing information from third parties and might have led to additional work and cost for some audits. PCAOB standards should be improved by revising the requirements in this area to drive a level of work effort commensurate with both the risks of material misstatement in the valuation of financial instruments and the relevance and reliability of the evidence obtained.
- The differences among the three existing estimates standards suggest that revising PCAOB standards to set forth a more uniform, risk-based approach to auditing estimates should lead to improvements in auditing practices in responding to the risks of material misstatement in accounting estimates, whether due to error or fraud.

Economic theory provides an analytical framework for the Board's consideration of these potential needs, as discussed below.

Principal-Agent Problems and Bounded Rationality

Principal-agent theory is commonly used to describe the economic relationship between investors and managers, and the attendant information and incentive problems that result from the separation of ownership and control.[109] The presence of information asymmetry[110] in such a principal-agent relationship results in an inherent incentive problem (moral hazard)[111] where the objectives of the agent (management) may differ from the objectives of the principal (investors), such that the actions of management may be suboptimal from the investors' perspective. For example, academic research suggests that management may engage in earnings management, in which they choose reporting methods and estimates that do not adequately reflect their companies' underlying economics, for a variety of reasons, including to increase their own compensation and job security.[112] The information asymmetry between investors and managers also leads to an information problem (adverse selection)[113] resulting in a higher cost of capital,[114] because investors may not be able to accurately assess the quality of management or of management reporting.

In addition to the potential incentive problem, cognitive biases, such as management optimism or overconfidence, can manifest themselves in managerial behavior.[115] The academic literature suggests that individuals often overstate their own capacity and rate their attributes as better than average.[116] Moreover, evidence indicates that, on average, CEOs and CFOs tend to be more optimistic than the broader population.[117] For example, managerial overconfidence has been linked to aggressive earnings forecasts by management.[118]

Given the degree of subjectivity in many financial statement estimates, these incentive and information issues, coupled with cognitive biases, present particular problems in the context of estimates. Managerial biases (conscious or otherwise) may lead managers to pick a more favorable estimate within the permissible range.[119] That is, incentive problems and cognitive biases may push management toward the most favorable estimates, either with respect to specific accounts or in the overall presentation.

Audits are one of the mechanisms for mitigating the information and incentive problems arising in the investor-management relationship.[120] Audits are intended to provide a check of management's financial statements, and thus reduce management's potential

[109] For studies of principal-agent relationships and the attendant information and incentive problems in the context of the separation of ownership and control of public companies and its implications in financial markets, *see, e.g.,* Michael C. Jensen and William H. Meckling, *Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure,* 3 Journal of Financial Economics 305 (1976).

[110] Economists often describe ''information asymmetry'' as an imbalance, where one party has more or better information than another party. For a discussion of the concept of information asymmetry, *see, e.g.,* George A. Akerlof, *The Market for ''Lemons'': Quality Uncertainty and the Market Mechanism,* 84 The Quarterly Journal of Economics 488 (1970).

[111] The moral hazard problem is also referred to as a hidden action, or agency problem in economics literature. The term ''moral hazard'' refers to a situation in which an agent could take actions (such as not working hard enough) that are difficult to monitor by the principal and would benefit the agent at the expense of the principal. To mitigate moral hazard problems, the agent's actions need to be more closely aligned with the interests of the principal. Monitoring is one mechanism to mitigate these problems. *See, e.g.,* Bengt Holmström, *Moral Hazard and Observability,* 10 The Bell Journal of Economics 74 (1979).

[112] *See* Paul M. Healy and James M. Wahlen, *A Review of the Earnings Management Literature and Its Implications for Standard Setting,* 13 (4) Accounting Horizons 365 (1999). For a seminal work on the agency problem between managers and investors, *see* Jensen and Meckling, *Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure.*

[113] Adverse selection (or hidden information) problems can arise in circumstances where quality is difficult to observe, including in principal-agent relationships where the principal's information problem means it cannot accurately assess the quality of the agent or the agent's work. In addition to diminishing the principal's ability to optimally select an agent, the problem of adverse selection can manifest in markets more broadly, leading to an undersupply of higher-quality products. For a discussion of the concept of adverse selection, *see, e.g.,* Akerlof, *The Market for ''Lemons'': Quality Uncertainty and the Market Mechanism.*

[114] *See, e.g.,* Richard A. Lambert, Christian Leuz, and Robert E. Verrecchia, *Information Asymmetry, Information Precision, and the Cost of Capital,* 16 (1) Review of Finance 1, 21 (2012).

[115] For a discussion of the manifestation of overconfidence in managerial behavior, *see, e.g.,* Anwer S. Ahmed and Scott Duellman, *Managerial Overconfidence and Accounting Conservatism,* 51 (1) Journal of Accounting Research 1 (2013); Itzhak Ben-David, John R. Graham, and Campbell R. Harvey, *Managerial Miscalibration,* 128 (4) The Quarterly Journal of Economics 1547 (2013); and Catherine M. Schrand and Sarah L.C. Zechman, *Executive Overconfidence and the Slippery Slope to Financial Misreporting,* 53 Journal of Accounting and Economics 311, 320 (2012).

[116] This and other biases are discussed in, among others, Gilles Hilary and Charles Hsu, *Endogenous Overconfidence in Managerial Forecasts,* 51 Journal of Accounting and Economics 300 (2011).

[117] *See* John R. Graham, Campbell R. Harvey, and Manju Puri, *Managerial Attitudes and Corporate Actions,* 109 Journal of Financial Economics 103, 104 (2013). Managerial attitude has been linked to a variety of corporate decisions, including corporate investment and mergers & acquisitions. *See* Ulrike Malmendier and Geoffrey Tate, *CEO Overconfidence and Corporate Investment,* 60 The Journal of Finance 2661 (2005); and Ulrike Malmendier and Geoffrey Tate, *Who Makes Acquisitions? CEO Overconfidence and the Market's Reaction,* 89 Journal of Financial Economics 20 (2008).

[118] *See* Paul Hribar and Holly Yang, *CEO Overconfidence and Management Forecasting,* 33 Contemporary Accounting Research 204 (2016).

[119] For purposes of this discussion, a ''favorable'' estimate can reflect either an upward or a downward bias, for example in earnings, depending on management incentives.

[120] *See* Paul M. Healy and Krishna G. Palepu, *Information Asymmetry, Corporate Disclosure, and the Capital Markets: A Review of the Empirical Disclosure Literature,* 31 Journal of Accounting and Economics 405, 406 (2001). *See also* Mark DeFond and Jieying Zhang, *A Review of Archival Auditing Research,* 58 Journal of Accounting and Economics 275 (2014).

incentive to prepare and disclose biased or inaccurate financial statements. Audit reports and auditing standards provide information to the market that may affect perceptions about the reliability of the financial statements and therefore mitigate investors' information problem, potentially lowering the company's cost of capital.[121]

The auditor is also an agent of investors, however, and the information asymmetry between investors and auditors can also give rise to risks of moral hazard and adverse selection. Auditors have incentives that align their interests with those of investors, such as legal considerations, professional responsibilities, and reputational concerns. However, they may also have incentives to behave sub-optimally from investors' point of view by, for example, (1) not sufficiently challenging management's estimates or underlying assumptions in order not to disturb the client relationship; (2) shirking, if they are not properly incentivized to exert the effort considered optimal by shareholders; or (3) seeking to maximize profits and/or minimize costs—sometimes at the expense of audit quality. As a result of such misaligned incentives, auditors may engage in practices that do not align with investors' needs and preferences.

In addition to the auditor's potential moral hazard problem, the presence of bounded rationality can inject another layer of challenges into auditing estimates. In economic theory, bounded rationality refers to the idea that when individuals make decisions, their rationality may be limited by certain bounds, such as limits on available information, limits on analytical ability, limits on the time available to make the decision, and inherent cognitive biases.[122] Even if incentives between principal and agent are aligned, the agent, being boundedly rational, may be unable to execute appropriately. Hence, some auditors may find auditing certain estimates challenging because, like all individuals, they may have limits on their ability to solve complex problems and to process information,[123] especially when faced with time constraints.[124] Research has shown that even sell-side research analysts, generally understood to be sophisticated financial experts, have trouble assessing the impact on earnings of companies' derivative instruments, where the associated financial reporting involves fair value measurements.[125]

In the context of auditing estimates, one such bound may be the ability of auditors to analyze and integrate different existing standards or process the information required to audit estimates that involve complex processes, which may require sophisticated analytical and modeling techniques. In the presence of bounded rationality, individuals may resort to heuristics (*i.e.,* rules of thumb).[126] In particular, auditors facing challenges in auditing an accounting estimate may resort to simplifications that might increase the potential for biases or errors that have seeped into financial statements to go undetected.[127]

The literature has linked cognitive issues to auditors' actions and attitudes, specifically to professional skepticism.[128] For example, ''research in psychology and accounting has identified that auditors' judgments are vulnerable to various problems, such as difficulty recognizing patterns of evidence, applying prior knowledge to the current judgment task, weighting evidence appropriately, and preventing incentives from affecting judgment in unconscious ways.'' [129] As a result, cognitive limitations may pose a threat to professional skepticism [130] and ''[b]ias-inducing tendencies can lead even the brightest, most experienced professionals, including auditors, to make suboptimal judgments.'' [131] Accordingly, the existence of bounded rationality and, in particular, some inherent cognitive biases might affect auditor judgment when auditing accounting estimates, even separate from any potential conflict of interest.

Some of the biases that might affect auditors include, but are not limited to:

- Anchoring Bias—decision makers anchor or overly rely on specific information or a specific value and then adjust to that value to account for other elements of the circumstance, so that there is a bias toward that value. In the auditing of estimates, the potential exists for anchoring on management's

[121] *See, e.g.,* Richard A. Lambert, Christian Leuz, and Robert E. Verrecchia, *Accounting Information, Disclosure, and the Cost of Capital,* 45 Journal of Accounting Research 385 (2007).

[122] For a seminal work in this field, *see* Herbert A. Simon, *A Behavioral Model of Rational Choice,* 69 The Quarterly Journal of Economics 99 (1955). Simon introduced this theory and argued that individuals cannot assimilate and process all the information that would be needed to maximize their benefits. Individuals do not have access to all the information required to do so, but even if they did, they would be unable to process it properly, since they are bound by cognitive limits.

[123] Daniel Kahneman refers to the mind as having two systems, System 1 and System 2. ''System 1 operates automatically and quickly . . . '' System 2 is the slower one that ''can construct thoughts in an orderly series of steps.'' System 2 operations ''require attention and are disrupted when attention is drawn away.'' Daniel Kahneman, *Thinking, Fast and Slow* 4, 20–22 (1st ed. 2011). Examples of System 2 operations include ''[f]ill[ing] out a tax form'' and ''[checking] the validity of a complex logical argument,'' both of which require time and attention. Without time, one cannot dedicate attention to a task and fully engage System 2, and hence is left with the automatic instinctual operation of System 1, which can lead to use of rules of thumb (heuristics) and ''biases of intuition.'' *Id.*

[124] Time is an essential limitation to problem solving, being fundamental to the definition of bounded rationality—''[t]he principle that organisms have limited resources, such as time, information, and cognitive capacity, with which to find solutions to the problems they face.'' Andreas Wilke and R. Mata, *Cognitive Bias,* as published in The Encyclopedia of Human Behavior 531 (2nd ed. 2012).

[125] *See* Hye Sun Chang, Michael Donohoe, and Theodore Sougiannis, *Do Analysts Understand the Economic and Reporting Complexities of Derivatives?* 61 Journal of Accounting and Economics 584 (2016). For a discussion of the bounded rationality of audit judgments, *see* Brian Carpenter and Mark Dirsmith, *Early Debt Extinguishment Transactions and Auditor Materiality Judgments: A Bounded Rationality Perspective,* 17 (8) Accounting, Organizations and Society 709, 730 (1992) (''[T]he self-reported actions taken by auditors on actual engagements appear to reveal less complexity in the sense that they are boundedly rational and tend to emphasize only a single judgment criterion than do the cognitive judgment processes of which they are capable.'').

[126] ''The essence of bounded rationality is thus to be a 'process of thought' rather than a 'product of thought': Individuals have recourse to reasonable procedures rather than to sophisticated computations which are beyond their cognitive capacities.'' Bertrand Munier, Reinhard Selten, D. Bouyssou, P. Bourgine et al., *Bounded Rationality Modeling,* 10 Marketing Letters 233, 234 (1999). In ''[s]ituations where evolved task-general procedures are helpful (heuristics, chunks) . . . agents have difficulty finding even qualitatively appropriate responses . . . agents are then left with heuristics . . . '' *Id.* at 237.

[127] For a discussion and examples of heuristics used by auditors, *see, e.g.,* Stanley Biggs and Theodore Mock, *An Investigation of Auditor Decision Processes in the Evaluation of Internal Controls and Audit Scope Decisions,* 21 (1) Journal of Accounting Research 234 (1983).

[128] Nelson argues that ''[p]roblem-solving ability, ethical predisposition, and other traits like self-confidence and tendency to doubt are all related to [professional skepticism] in judgment and action,'' and, furthermore ''[c]ognitive limitations affect [professional skepticism] in predictable ways.'' Mark Nelson, *A Model and Literature Review of Professional Skepticism in Auditing,* 28 Auditing: A Journal of Practice & Theory 1, 2 (2009).

[129] *Id.* at 6.

[130] ''[A]uditors' judgments can be flawed because, like all people, sometimes they do not consistently follow a sound judgment process and they fall prey to systematic, predictable traps and biases. People, including experienced professionals . . . often unknowingly use mental ''shortcuts'' . . . to efficiently navigate complexity . . . [S]ituations can arise where they systematically and predictably lead to suboptimal judgments and potentially inhibit the application of appropriate professional skepticism.'' Steven M. Glover and Douglas F. Prawitt, *Enhancing Auditor Professional Skepticism* (Nov. 2013) (a report commissioned by the Standards Working Group of the Global Public Policy Committee), at 10.

[131] *Id.*

estimates.[132] This can be seen as a manifestation of findings that auditors may, at times, experience difficulties weighting evidence appropriately.[133]

• Confirmation Bias—a phenomenon wherein decision makers have been shown to actively seek out and assign more weight to evidence that confirms their hypothesis, and ignore or underweight evidence that could disconfirm their hypothesis. As such, confirmation bias can be thought of as a form of selection bias in collecting evidence. It becomes even more problematic in the presence of anchoring bias, since auditors may anchor on management's estimate and may only seek out information to corroborate that value (or focus primarily on confirming, rather than challenging, management's model).[134] For example, in the accounting estimates standard, as one of the available three approaches in evaluating the reasonableness of an estimate, the auditor is instructed to ''develop an independent expectation of the estimate to *corroborate* the reasonableness of management's estimate'' (emphasis added).[135]

• Familiarity Bias—''Familiarity is associated with a general sense of comfort with the known and discomfort with—even distaste for and fear of—the alien and distant.'' [136] In the context of auditing accounting estimates, auditors may be biased toward procedures, methods, models, and assumptions that seem more familiar to them, and auditors' familiarity with management may lead them to tend to accept management's assertions without sufficient challenge or consideration of other options.[137]

All of these cognitive biases would pose a threat to the proper application of professional skepticism and an appropriate focus on the potential for management bias in accounting estimates. Academic research illustrates how cognitive biases may affect auditing. Griffith et al. find that auditors focus primarily on confirming, rather than challenging, management's model, and appear to accept management's model as a starting point and then verify aspects of that model.[138] None of the auditors in the study indicated that he or she considered whether additional factors beyond the assumptions made by management should be included in management's model. This type of behavior is suggestive of anchoring bias.[139]

Importantly, bounded rationality and the associated biases exist in addition to any incentive problems (moral hazard). Cognitive biases and moral hazard could work in the same direction to increase the likelihood of auditors agreeing with management, not considering contradictory evidence, or discounting the potential importance or validity of alternative methods, data, and assumptions. It is important for auditors to be wary of their own biases as well as management's biases when auditing accounting estimates (*e.g.,* in order to avoid merely searching for evidence that corroborates management's assertions).[140]

It is also logical to conclude that the potential for bias increases in the presence of measurement uncertainty, since there is more latitude in recording an estimate in such circumstances. Academic studies find that the measurement uncertainty associated with accounting estimates can be substantial.[141] Martin, Rich, and Wilks point out that fair value measurements frequently incorporate forward-looking information as well as judgments, and that, since future events cannot be predicted with certainty, an element of judgment is always involved.[142] The measurement uncertainty inherent in estimates allows room for both management bias and error to affect preparers' valuation judgments, and estimates become less useful to capital market participants as they become less reliable.[143]

To help auditors overcome, or compensate for, potential biases and identify situations where management is consistently optimistic, and to discourage shirking, the new standard emphasizes the auditor's existing responsibility to apply professional skepticism, including addressing potential management bias. It does so by emphasizing these professional obligations in the specific context of auditing accounting estimates. It also includes revised terminology to describe the nature of the auditor's responsibility and the new requirements described in Section C to guide the auditor in the appropriate application of professional skepticism, including addressing potential management bias, when auditing estimates.

Some commenters on the proposal were supportive of a new standard taking into consideration management bias and emphasizing the application of professional skepticism while some others highlighted the difficulties in evaluating and identifying management bias in accounting estimates due to the uncertainty and subjectivity involved. Some commenters were critical of ''negative'' tone or overemphasis on management bias and the application of professional skepticism. Some commenters, on the other hand, recommended that the new standard further expand the discussion and emphasis of management bias and the need to challenge management's assertions. As discussed above, the Board believes that reinforcing the importance of professional skepticism when auditing estimates, in light of the potential for management bias, will remind auditors of their responsibilities to evaluate contradictory evidence and

[132] For a discussion on anchoring biases and some evidence, *see, e.g.,* Robert Sugden, Jiwei Zheng, and Daniel John Zizzo, *Not All Anchors Are Created Equal,* 39 Journal of Economic Psychology 21 (2013).

[133] Nelson, *A Model and Literature Review of Professional Skepticism in Auditing* 6.

[134] For a discussion of confirmation bias, *see, e.g.,* Raymond S. Nickerson, *Confirmation Bias: A Ubiquitous Phenomenon in Many Guises,* 2 Review of General Psychology 175 (1998). For a discussion of the manifestation of this bias in auditing, *see, e.g.,* Griffith et al., *Audits of Complex Estimates as Verification of Management Numbers: How Institutional Pressures Shape Practice.*

[135] AS 2501.10b.

[136] Gur Huberman, *Familiarity Breeds Investment,* 14 Review of Financial Studies 659, 678 (2001).

[137] Academic research also argues and provides evidence that some level of auditor familiarity with the client can help the auditing process. *See* Wuchun Chi and Huichi Huang, *Discretionary Accruals, Audit-Firm Tenure and Audit-Partner Tenure: Empirical Evidence from Taiwan,* 1 (1) Journal of Contemporary Accounting and Economics 65, 67 (2005). Although the study does not address familiarity bias, the results indicate that auditor familiarity with the client produces higher earnings quality as it has an effect on learning experience and increases client-specific knowledge, while excessive familiarity impairs audit quality, resulting in lower earnings quality.

[138] *See* Griffith et al., *Audits of Complex Estimates as Verification of Management Numbers: How Institutional Pressures Shape Practice.*

[139] The problem resulting from this bias can be ameliorated, but not completely eliminated. The audit, by its nature, uses the company's financial statements as a starting point. For that reason, starting with management's number is often unavoidable since the auditor is opining on whether the company's financial statements are fairly presented, in all material respects, in conformity with the applicable financial reporting framework. When reference is made to anchoring bias in this release, it is therefore not intended to refer to the auditor's responsibility to start with management's financial statements, but instead to the auditor's potential failure to effectively challenge management.

[140] *See, e.g.,* Martin et al., *Auditing Fair Value Measurements: A Synthesis of Relevant Research.*

[141] *See, e.g.,* Brant E. Christensen, Steven M. Glover, and David A. Wood, *Extreme Estimation Uncertainty in Fair Value Estimates: Implications for Audit Assurance,* 31 Auditing: A Journal of Practice & Theory 127 (2012); Cannon and Bedard, *Auditing Challenging Fair Value Measurements: Evidence from the Field.*

[142] *See* Martin et al., *Auditing Fair Value Measurements: A Synthesis of Relevant Research.*

[143] *See, e.g.,* Russell Lundholm, *Reporting on the Past: A New Approach to Improving Accounting Today,* 13 Accounting Horizons 315 (1999); and Griffith et al., *Audits of Complex Estimates as Verification of Management Numbers: How Institutional Pressures Shape Practice.*

to address the effects of bias on the financial statements.

Fostering a More Efficient Audit

Tailoring Requirements for Different Types of Pricing Information

The new standard requires different audit procedures for the different types of third-party pricing information used for fair value measurements of financial instruments, and is intended to drive a level of work effort commensurate with both the risks of material misstatement in the valuation of financial instruments and the relevance and reliability of the evidence obtained. Existing requirements do not provide specific direction about how to evaluate the relevance and reliability of pricing information from third parties and might have led to additional work and cost for some audits and insufficient work and effort for some audits. Under the new standard, auditors will be prompted to direct more effort toward pricing information that may be more subject to bias or error based on the type of instrument being valued and how or by whom the pricing information is generated. For certain types of third parties—specifically, pricing services and brokers or dealers—the new standard provides more specific direction.

The Board understands that pricing information generated by pricing services generally tends to have three main characteristics not shared by other estimates (1) uniformity of product (with little to no differentiation across users, so there is less risk of inherent bias); (2) work of the pricing service that, in most cases, is not prepared at the direction of a particular client; and (3) buyers of the product with little, if any, market power. These characteristics reduce the risk of bias, unless the pricing service has a relationship with the company by which company management has the ability to directly or indirectly control or significantly influence the pricing service. The potential for bias is further attenuated for pricing services since there is monitoring by the market as a whole, and most of the prices provided by these services are for traded securities or for securities for which quotes are available or for which similar securities are traded. Overall, the Board believes that these characteristics contribute to a lower risk of bias in information provided by pricing services relative to other estimates and warrant tailored audit requirements.

The Board believes that there also are differences between the information provided by pricing services on the one hand, and brokers or dealers on the other, that warrant differential treatment. Based on outreach and observations from the Board's oversight activities, the Board understands that pricing services tend to accumulate overall market information, rather than engage directly in market transactions, and typically have well-defined methodologies that are used consistently over time. Therefore, they tend to provide customers with more uniform pricing information. Brokers or dealers, on the other hand, are in the business of providing liquidity to the market (by acting as a buyer or seller) and connecting buyers and sellers. As such, it is likely their pricing is more idiosyncratic (*i.e.,* dependent on the party asking for a quote, timing, and other factors related to the business operations of the broker or dealer) and brokers or dealers may occasionally be less transparent in pricing the instruments. In addition, not all brokers or dealers necessarily have a firm-wide methodology, as they typically provide prices on an as-requested basis. Therefore, the Board believes that auditors' consideration of pricing information obtained from a broker or dealer should differ from their consideration of pricing information from a pricing service.

The issue of different types of pricing information provided by third-party sources is addressed in the special topics appendix of the new standard. This appendix more broadly addresses auditing financial instruments and includes procedures specific to an auditor's use of evidence from third-party pricing sources. These procedures allow the auditor to use pricing information from pricing sources used by the company in some circumstances (*e.g.,* generally in cases where the company uses a pricing service based on trades of similar instruments to value securities with a lower risk of material misstatement). This would be an appropriate risk-based audit response, since there is a lower chance of management bias when the company uses a pricing service.

One commenter who provided views on the third-party pricing information agreed that the reliability of the pricing information from the third-party pricing sources may differ and that factors covered in the proposal captured that variability. A few commenters also asserted that third-party pricing services generally provide pricing that is free from influence of any one user of the services, and one of these commenters opined that this absence of management bias increased the relevance and reliability of the evidence. In addition, one commenter suggested inclusion of differences in valuation approaches of pricing services as an additional factor in evaluating reliability. Although the differences in valuation approaches could create biased valuations, auditors are required to evaluate the relevance and reliability of pricing information provided by pricing services.

Multiple Standards With Overlapping Requirements

Having multiple standards with similar approaches but varying levels of detail in procedures may create unnecessary problems. Perceived inconsistencies among existing standards may result in (1) different auditor responsibilities for accounts for which a similar audit approach would seem appropriate; (2) inconsistent application of standards; and (3) inappropriate audit responses.

Academic research speaks to the undesirable nature of overlapping standards addressing the same issue, which adds to task difficulty [144] and may, therefore, create unnecessary additional costs, as it is costly to sift through the standards and reconcile potential conflicts. These costs may exacerbate the principal-agent and cognitive challenges discussed above. For example, auditors might, consciously or otherwise, apply the standards in a manner that satisfies their objectives but not those of investors (*e.g.,* auditors may choose an approach with fewer procedures and requirements to minimize audit cost, or for expediency, hence maximizing their profits). The existence of overlapping requirements might also lead to uncertainty about compliance, if auditors do not understand what is required. Finally, overlapping requirements may increase perceived uncertainty about audit quality, since market participants may not fully understand what standard is being, or even should be, applied.

To address the issues stemming from having multiple, overlapping estimates standards, the new standard replaces the existing three standards related to auditing accounting estimates. Moreover, it aligns the requirements with the risk assessment standards through targeted amendments to promote the development of appropriate responses to the risks of material

[144] *See* Brian Bratten, Lisa Milici Gaynor, Linda McDaniel, Norma R. Montague, and Gregory E. Sierra, *The Audit of Fair Values and Other Estimates: The Effects of Underlying Environmental, Task, and Auditor-Specific Factors,* 32 Auditing: A Journal of Practice & Theory 7, 15–16 (2013).

misstatement related to accounting estimates.

A number of commenters supported the development of a single standard to replace the three existing standards. For example, some noted that a single, consistent set of requirements aligned with the risk assessment standards would provide greater uniformity and clarity and eliminate the need to navigate among three related standards in order to ensure that all requirements were met. On the other hand, one commenter cautioned that a single standard would lead to a one-size-fits-all audit approach and not allow the tailoring of audit procedures based on the issuer-specific risks of material misstatement. By aligning with the risk assessment standards and describing the basic requirements for testing and evaluating estimates, the Board believes the new standard is designed to allow auditors to tailor their procedures in order to respond to specific risks of material misstatement.

Lack of Market Solutions

The issues discussed above are not, and cannot efficiently be, addressed through market forces alone because the auditor may not be fully incentivized to address them and market forces may not be effective in making the auditor more responsive to investors' concerns regarding the auditing of estimates. The auditor may not be fully incentivized because auditors may incur additional costs to produce higher audit quality but would earn lower profits on the audit, since audit quality may not be observable [145] and auditors may be unable to charge more for better audits.[146] Furthermore, because investors are diverse and geographically distributed, they face a potential collective action problem that creates additional barriers to jointly negotiating with auditors over requirements for auditing accounting estimates.

For the mitigation of this collective action problem and other potential sources of market failure,[147] investors generally rely on auditing standards that are based on investor and public interests. PCAOB auditing standards establish performance requirements that, if not implemented, can result in costly penalties to the auditor in the form of litigation and reputational risk.

Economic Impacts

Benefits

The new standard should lead to two broad categories of benefits. The first relates directly to audit quality and the second relates to fostering an efficient risk-based approach to auditing accounting estimates, including fair value measurements. The new standard strengthens auditor responsibilities for auditing accounting estimates, including fair value measurements, which should increase the likelihood that auditors detect material misstatements, and more explicitly integrates the risk assessment standards, which should encourage a uniform approach to achieve a more efficient and risk-based audit response. These improvements should enhance audit quality and, in conjunction with the clarification of the procedures the auditor should perform, should provide greater confidence in the accuracy of companies' financial statements.[148] From a capital market perspective, an increase in the information quality of companies' financial statements resulting from improved audit quality can reduce the non-diversifiable risk to investors and generally should result in investment decisions by investors that more accurately reflect the financial position and operating results of each company, increasing the efficiency of capital allocation decisions.[149]

The extent of these benefits, which are discussed further below, will largely depend on the extent to which firms have to change their practices and methodologies. Benefits will be less in the case of firms that have already adopted practices and methodologies similar to the requirements being proposed.

First, the new standard should reduce the problems generated by moral hazard and potential cognitive biases by strengthening the performance requirements for auditing accounting estimates and by emphasizing the importance of addressing potential management bias and the need to maintain a skeptical mindset while auditing accounting estimates. Reinforcing the need for professional skepticism should encourage auditors, for example, to ''reflam[e] hypotheses so that confirmation biases favor [professional skepticism],'' and thereby mitigate the effect of such biases on auditor judgment.[150] It should encourage auditors to be more conscious when weighing audit evidence and should reduce instances where auditors fail to consider contradictory evidence. For example, the use of terms such as ''evaluate'' and ''compare'' instead of ''corroborate,'' and greater emphasis on auditors identifying the significant assumptions in accounting estimates should promote a more deliberative approach to auditing estimates, rather than a mechanical process of looking for evidence to support management's assertions. Academic research also provides evidence on the effect of framing in the context of auditors' fair value judgments.[151] In an experimental

[145] An ''audit is a credence service in that its quality may never be discovered by the company, the shareholders or other users of the financial statements. It may only come into question if a 'clean' audit report is followed by the collapse of the company.'' *See* Alice Belcher, *Audit Quality and the Market for Audits: An Analysis of Recent UK Regulatory Policies,* 18 Bond Law Review 1, 5 (2006). Credence services are difficult for users of the service (such as investors in the context of company audit services) to value because their benefits are difficult to observe and measure. *See also* Monika Causholli and W. Robert Knechel, *An Examination of the Credence Attributes of an Audit,* 26 Accounting Horizons 631 (2012).

[146] The general effect of cost pressures on audit quality has been studied in the academic literature with varying empirical findings. *See, e.g.,* James L. Bierstaker and Arnold Wright, *The Effects of Fee Pressure and Partner Pressure on Audit Planning Decisions,* 18 Advances in Accounting 25 (2001); B. Pierce and B. Sweeney, *Cost-Quality Conflict in Audit Firms: An Empirical Investigation,* 13 European Accounting Review 415 (2004); and Scott D. Vandervelde, *The Importance of Account Relations When Responding to Interim Audit Testing Results,* 23 Contemporary Accounting Research 789 (2006).

[147] For a discussion of the concept of market failure, *see, e.g.,* Francis M. Bator, *The Anatomy of Market Failure,* 72 The Quarterly Journal of Economics 351 (1958); and Steven G. Medema, *The Hesitant Hand: Mill, Sidgwick, and the Evolution of the Theory of Market Failure,* 39 History of Political Economy 331 (2007).

[148] For a discussion on the relationship between audit quality and financial reporting quality, *see* DeFond and Zhang, *A Review of Archival Auditing Research* 275, 281 (''. . . [A]udit quality is a component of financial reporting quality, because high audit quality increases the credibility of the financial reports. This increased credibility arises through greater assurance that the financial statements faithfully reflect the [company's] underlying economics.'').

[149] *See, e.g.,* Lambert et al., *Accounting Information, Disclosure, and the Cost of Capital,* 388 (finding that information quality directly influences a company's cost of capital and that improvements in information quality by individual companies unambiguously affect their non-diversifiable risks.); and Ahsan Habib, *Information Risk and the Cost of Capital: Review of the Empirical Literature,* 25 Journal of Accounting Literature 127, 128 (2006) (''[H]igh quality auditing could provide credible information in the market regarding the future prospect of the [company] and hence could reduce the cost of capital in general, and cost of equity capital in particular.''). *See also* Jukka Karjalainen, *Audit Quality and Cost of Debt Capital for Private Firms: Evidence from Finland,* 15 International Journal of Auditing 88 (2011).

[150] Nelson, *A Model and Literature Review of Professional Skepticism in Auditing* 2. In addition, another experimental study found other factors, such as improved cognitive tools, might be necessary to enhance the use of professional judgment and critical thinking skills. *See* Anthony Bucaro, *Enhancing Auditors' Critical Thinking in Audits of Complex Estimates,* Accounting, Organizations and Society 1, 11 (2018).

[151] *See* Jeffrey Cohen, Lisa Gaynor, Norma Montague, and Julie Wayne, *The Effect of Framing on Information Search and Information Evaluation in Auditors' Fair Value Judgments* (Feb. 2016) (working paper, available in Social Science Research Network).

study, Cohen et al. found that when one group of auditors were instructed to ''support and oppose'' management's assertions, they recommended significantly different fair value estimates than another group of auditors who were instructed to ''support'' management's assertions.

Several commenters on the proposal supported the emphasis on professional skepticism and one commenter agreed that the new requirements would prompt auditors to devote greater attention to identifying and addressing management bias. Moreover, some commenters confirmed that raising awareness of cognitive biases and including reminders of professional skepticism could help mitigate the effects of auditors' own biases. In addition, a few commenters supported the change in terminology and agreed that it would further reinforce the application of professional skepticism by moving from a corroborative mindset to an evaluation mindset, while one commenter expressed skepticism about the impact of terminology on auditor behavior. Some commenters noted the difficulties and limitations in evaluating and identifying management bias in accounting estimates due to the uncertainty and subjectivity involved. Given the subjective assumptions and inherent measurement uncertainty in many estimates, bias may not be eliminated entirely. However, the Board believes that a standard that reinforces the application of professional skepticism and reminds auditors of risk of management bias and their responsibilities to evaluate contradictory evidence and to address the effects of bias can help ameliorate the problems resulting from this bias.

Second, requirements specific to the use of pricing information from third parties as audit evidence should lead to a more efficient audit as these new requirements will prompt more tailored audit procedures (including by performing procedures over groups of similar instruments, where appropriate) and direct more audit effort toward pricing information that may be more subject to bias or error.

Third, in addition to achieving these efficiencies, the new standard should lead to a better allocation of auditing resources more generally by aligning more closely with the risk assessment standards, with more hours, effort, and work being dedicated to higher-risk areas. Essentially, the new standard should lead to increased audit quality for harder-to-measure estimates (*e.g.,* estimates with high inherent subjectivity) due to enhanced procedures and should lead to an increase in efficiency for easier-to-measure and lower-risk estimates.

Fourth, uniformity of the standards should lead to benefits to auditors and users of financial statements. A single, consistent set of requirements should lead to more consistent and efficient audits with greater comparability since there should be no doubt as to what requirements to apply, and no need to navigate among multiple standards to make sure that all relevant requirements are met. In turn, assuming that firms comply with the new requirements, this should increase and make more uniform the quality of the information presented in the financial statements. Having a uniform set of requirements might also enhance the audit committee's understanding of the auditor's responsibilities and, therefore, potentially facilitate communications between the audit committee and the auditor. Moreover, a single standard will facilitate the development of timely guidance for specific issues when needed.

Finally, establishing more clarity and specificity in requirements for estimates should lead to efficiency gains by providing auditors with a better understanding both of their duties and of the Board's expectations, reducing the risk that auditors would perform unnecessary or ineffective procedures. Hence, holding audit quality constant, auditors should gain efficiencies.

Overall, these changes should lead to greater confidence in financial statements, reducing investors' information asymmetry. Reinforcing and clarifying auditors' responsibilities should enhance investors' trust that auditors are obtaining sufficient appropriate evidence regarding management's accounting estimates, thereby increasing investors' confidence in companies' financial statements and the corresponding audit work performed. Also, the new standard may lead to fewer restatements as a result of increased audit quality for higher-risk estimates and, hence, increase investor confidence in financial statements. Increased confidence in companies' financial statements should ameliorate investors' information asymmetry problem (adverse selection) and allow for more efficient capital allocation decisions.

Some commenters on the proposal cautioned against raising investor expectations about the impact of auditing procedures on the reliability and accuracy of accounting estimates and expressed skepticism about potential benefits related to investor confidence and audit quality. For example, citing the inherent uncertainty and judgment involved in estimates, some argued that unreasonable bias would be difficult to detect and a level of bias and uncertainty would remain irrespective of the level of audit effort. While auditing cannot eliminate the uncertainty and judgment involved in estimates, it can help identify material omissions and errors. Furthermore, even if more robust auditing procedures do not yield more accuracy and precision for each individual estimate, to the extent that any pattern of bias or error can be eliminated, this should result in more reliable financial reporting. The financial statements as a whole may not be fairly presented if the most optimistic estimates are consistently selected by the preparer even when each individual estimate is within a reasonable range. Emphasizing the risk of management bias in accounting estimates and the auditor's responsibility to apply professional skepticism can help focus auditors on the effects of management bias on financial statements.

Costs

The Board recognizes that imposing new requirements may result in additional costs to auditors and the companies they audit. In addition, to the extent that auditors pass on any increased costs through an increase in audit fees, companies and investors could incur an indirect cost.

Auditors may incur certain fixed costs (costs that are generally independent of the number of audits performed) related to implementing the new standard and related amendments. These include costs to update audit methodologies and tools, prepare training materials, and conduct training. Larger firms are likely to update methodologies using internal resources, whereas smaller firms are more likely to purchase updated methodologies from external vendors.

In addition, auditors may incur certain variable costs (costs that are generally dependent on the number of audits performed) related to implementing the new standard. These include costs of implementing the standard at the audit engagement level (*e.g.,* in the form of additional time and effort spent on the audit). For example, the new standard requires, in some instances, performing more procedures related to assessing risk and testing the company's process, such as evaluating which of the assumptions used by the company are significant. This could impose additional costs on auditors and require additional management time.

Recurring costs (fixed or variable) may also increase if firms decide to increase their use of specialists in response to the final auditing

requirements. If this were to occur, it may in particular affect firms that do not currently employ or engage specialists and instead rely on the work of company specialists for some of their audit engagements, potentially affecting the competitiveness of such firms for such audit engagements.[152]

To the extent the new standard and related amendments require new or additional procedures, they may increase costs. For example, the amendment to AS 2110.52 requires the auditor to include, as part of the key engagement team members' discussion of the potential for material misstatement due to fraud, how the financial statements could be manipulated through management bias in accounting estimates in significant accounts and disclosures. The new requirement focuses the auditor's attention on a risk that is particularly relevant to accounting estimates and further underscores the importance of applying professional skepticism in this area. The additional requirement could increase costs.

The new standard's impact on the auditor's fixed and variable costs will likely vary depending on, among other things, the extent to which the requirements have already been incorporated in accounting firms' audit methodologies or applied in practice by individual engagement teams. For example, the new standard sets minimum requirements when using pricing information obtained from third-party pricing sources, so audit firms that are doing less than the minimum requirements will likely experience higher cost increases. In addition, the standard's impact could vary based on the size and complexity of an audit. All else equal, any incremental costs generally are expected to be scalable: Higher for larger, more complex audits than for smaller, less complex audits.

The economic impact of the new standard on larger accounting firms and smaller accounting firms may differ. For example, larger accounting firms will likely take advantage of economies of scale by distributing fixed costs (*e.g.,* updating audit methodologies) over a larger number of audit engagements. Smaller accounting firms will likely distribute their fixed costs over fewer audit engagements. However, larger accounting firms will likely incur greater variable costs than smaller firms, because larger firms more often perform larger audits and it seems likely that these larger audits will more frequently involve accounting estimates with complex processes. It is not clear whether these costs (fixed and variable), as a percentage of total audit costs, will be greater for larger or for smaller accounting firms. One commenter on the proposal cautioned that the costs associated with implementing the new standard might be significant for some smaller firms; however, this commenter also noted that many of the smaller firms applying analogous requirements of other standard setters (*e.g.,* ISA 540) would already have methodologies in place that addressed many of the requirements in the new standard. Another commenter asserted that any new standard would have a disproportionate impact on medium-sized accounting firms and their clients, as compared with larger firms and their clients. Additionally, one commenter noted that passing any incremental costs on to clients might be especially difficult for smaller firms. The Board believes that the new standard and related amendments are risk-based and scalable for firms of all sizes, and that any related cost increases are justified by expected improvements in audit quality.

In addition to the auditors, companies being audited may incur costs related to the new standard and related amendments, both directly and indirectly. Companies could incur direct costs from engaging with or otherwise supporting the auditor performing the audit. Some companies could face costs of providing documents and responding to additional auditor requests for audit evidence, due to a more rigorous evaluation of the company's assumptions and methods. Companies may also incur costs if, as a result of the new standard, auditors need to discuss additional information with audit committees relating to accounting estimates. In addition, to the extent that auditors are able to pass on at least part of the increased costs they incur by increasing audit fees, companies and investors could incur an indirect cost. Some commenters on the proposal raised concerns that some of the increased costs, including the costs associated with requests for additional data and pricing information from third parties, might be passed through to companies in the form of increased audit fees. One commenter asserted that the proposal would in effect require some companies to increase their use of quantitative models that employ mathematical and statistical techniques producing precise calculations. The Board acknowledges the possibility of increased costs to companies related to the new requirements, but believes that it is reasonable to expect corresponding increases in audit quality, which will benefit companies and investors as well as auditors, as discussed in the previous section.

Some commenters argued that the new requirements would likely lead to significant expansion of audit procedures, documentation, and/or use of specialists, with limited incremental benefit. In addition, a few commenters raised concerns that the requirements could result in increased or duplicative work for issuers with no perceived benefit. The Board believes that the scalable, risk-based approach of the new standard allows auditors to tailor their procedures to respond to the risks. By aligning with the risk assessment standards and setting forth a framework for testing and evaluating procedures, the new standard is designed to require more audit effort for accounting estimates with higher risk of material misstatement, where greater benefits are expected, and less audit effort for estimates with lower risk of material misstatement, where lower potential benefits are expected. In some areas, such as evaluating the relevance and reliability of pricing information provided by third-party pricing sources, the new standard may result in decreased audit effort and decreased costs, where justified by lower risk of material misstatement.

Unintended Consequences

One potential unintended consequence of replacing three existing standards with one standard might be a perceived loss of some explanatory language, since the new standard is intended to eliminate redundancies in the current standards. The Board believes that the new standard and related amendments, interpreted as described in this release, should provide adequate direction. However, the PCAOB will monitor implementation to determine whether additional interpretive guidance is necessary.

Another possible unintended consequence may result if an auditor exploits the latitude allowed under the new standard for using information from the company's third-party pricing source, but does so inappropriately. The new standard does, however, set forth specific direction for evaluating the relevance and reliability of such

[152] The PCAOB staff analyzed inspection data to assess the baseline for auditors' use of the work of specialists and existing practice in the application of those requirements. The PCAOB observed that the firms that do not currently employ or engage auditor's specialists and use the work of company specialists tend to be smaller audit firms. The PCAOB staff also found that smaller audit firms generally have comparatively few audit engagements in which they use the work of company specialists. *See* the Specialists Release, *supra* note 2, for additional discussion.

information from the third-party pricing source.

One commenter also cautioned that perceived information sharing by third-party pricing sources beyond contractual agreements could induce market data originators to stop sharing their confidential market data with pricing services. The Board does not seek to impose obligations on auditors to obtain pricing information beyond what is available under prevailing subscriber arrangements. Clarifications reflected in the requirements with respect to grouping of financial instruments also should help alleviate concerns in this area.

Finally, a few commenters on the proposal presented other potential unintended consequences. For example, one commenter cautioned that auditors may expand procedures performed unnecessarily, not as a response to increased risk, but due to fear of inspections. The Board believes that a single, uniform set of requirements with more clarity and specificity should provide auditors with a better understanding both of their duties and of the Board's expectations and reduce the risk that auditors would perform unnecessary procedures due to fear of inspections.

Another commenter pointed to the risk of cost spillover to private company audits, where PCAOB standards are not legally required but may nevertheless be applied. Pursuant to its statutory mandate under the Sarbanes-Oxley Act, the Board sets standards for audits of issuers and SEC-registered brokers and dealers based on considerations of investor protection and the public interest in the preparation of informative, accurate, and independent audit reports. The Board does not have authority either to require or to prohibit application of its standards in other contexts, and cannot predict or control the extent to which private companies and their auditors may elect to apply PCAOB standards.

The Board expects that the overall benefits of the proposed standard will justify any potential unintended negative effects.

Alternatives Considered, Including Policy Choices

The development of the new standard involved considering a number of alternative approaches to address the problems described above. This section explains (1) why standard setting is preferable to other policy-making alternatives, such as providing interpretive guidance or enhancing inspection or enforcement efforts; (2) other standard-setting approaches that were considered; and (3) key policy choices made by the Board in determining the details of the new standard.

Alternatives to Standard Setting—Why Standard Setting is Preferable to Other Policy-Making Alternatives

Among the Board's policy tools, an increased focus on inspections, enforcement of existing standards, or providing additional guidance are alternatives to revising the standards. The Board considered whether increasing inspections or enforcement efforts would be effective corrective mechanisms to address concerns with the audit of estimates, including fair value measurements, and concluded that inspections or enforcement actions alone would be less effective in achieving the Board's objectives than in combination with amending auditing standards.

Inspection and enforcement actions take place after audits have occurred (and potential investor harm in the case of insufficient audit performance). They reinforce future adherence to current auditing standards. Given the differences in the estimates standards discussed previously, devoting additional resources to inspections and enforcement activities without improving the relevant performance requirements for auditors would increase auditors' compliance with what the Board and many stakeholders view as standards that could be improved.

The PCAOB has issued seven Staff Audit Practice Alerts between 2007 and 2014 that address, to varying degrees, auditing accounting estimates.[153] The PCAOB has considered issuing additional practice alerts or other staff guidance specific to the use of third parties such as pricing services.[154] The Board believes guidance specific to the use of third parties would be limited to discussing the auditor's application of the existing standards and, given the differences in these standards discussed herein, guidance would be an ineffective tool and not a long-term solution.

The Board's approach reflects its conclusion that, in these circumstances, standard setting is needed to fully achieve the benefits that could result from improvements in the auditing of estimates.

Other Standard-Setting Alternatives Considered

The Board considered certain standard-setting alternatives, including (1) developing a separate standard on auditing the fair value of financial instruments or (2) enhancing the estimates standards through targeted amendments.

Developing a Separate Standard on Auditing the Fair Value of Financial Instruments

The Board considered developing a separate standard that would specifically address auditing the fair value of financial instruments. The Board chose not to pursue this alternative because the addition of a separate standard could result in confusion and potential inconsistencies in the application of other standards. Additionally, the auditing issues pertinent to accounting estimates, including financial instruments, inherently overlap. Instead, the new standard includes a special topics appendix, which separately discusses certain matters relevant to financial instruments without repeating requirements that relate more broadly to all estimates, such as evaluating audit evidence.

Enhancing the Estimates Standards Through Targeted Amendments

The Board considered, but determined not to pursue, amending rather than replacing the three estimates standards. Retaining multiple standards with similar requirements would not eliminate redundancy and could result in confusion and potential inconsistencies in the application of the standards. The approach presented in the new standard is designed to be clearer and to result in more consistent application and more effective audits.

Commenters on the proposal were generally supportive of a single, uniform standard with a consistent set of requirements. One commenter said that they believed that audit quality would be promoted with a single framework. On the other hand, one commenter, citing the differences between fair value measurements and derivatives and hedging accounting, expressed concerns

[153] *See, e.g., Matters Related to Auditing Fair Value Measurements of Financial Instruments and the Use of Specialists,* Staff Audit Practice Alert No. 2 (Dec. 10, 2007); *Auditor Considerations Regarding Fair Value Measurements, Disclosures, and Other-Than-Temporary Impairments,* Staff Audit Practice Alert No. 4 (Apr. 21, 2009); *Assessing and Responding to Risk in the Current Economic Environment,* Staff Audit Practice Alert No. 9 (Dec. 6, 2011); *Maintaining and Applying Professional Skepticism in Audits,* Staff Audit Practice Alert No. 10 (Dec. 4, 2012); and *Matters Related to Auditing Revenue in an Audit of Financial Statements,* Staff Audit Practice Alert No. 12 (Sept. 9, 2014).

[154] Other standard setters have issued guidance relating to their existing standards. For example, the IAASB issued International Auditing Practice Note 1000, *Special Considerations in Auditing Financial Instruments* (Dec. 16, 2011), to provide guidance to auditors when auditing fair value measurements of financial instruments.

about combining multiple standards into one, but did not specify how the auditing approach could or should differ. Another commenter cautioned that a single standard would lead to a one-size-fits-all audit approach and not allow the tailoring of audit procedures. However, by aligning with the risk assessment standards and describing the basic requirements for testing and evaluating estimates, the new standard is designed to allow the auditors to tailor their procedures in order to respond to specific risks of material misstatement.

Key Policy Choices

Given a preference for a single, comprehensive standard applicable to all accounting estimates, including fair value measurements, in significant accounts and disclosures, the Board considered different approaches to addressing key policy issues.

Include a Reporting Requirement in the New Standard

Measurement uncertainty cannot be eliminated entirely through audit procedures. This raises a question of whether reporting of additional information about such procedures in the auditor's report is necessary.

However, the Board also considered whether requiring communication in the auditor's report relating to estimates would be duplicative of the new requirement to communicate critical audit matters (''CAMs''); any matters arising from the audit of the financial statements that were communicated or required to be communicated to the audit committee and that (1) relate to accounts or disclosures that are material to the financial statements and (2) involved especially challenging, subjective, or complex auditor judgments.[155] Under the new auditor's reporting standard, auditors will identify each CAM, describe the principal considerations that led them to determine it was a CAM, briefly describe how the CAM was addressed in the audit, and refer to the relevant accounts or disclosures in the financial statements. Because these reporting requirements will apply to financial statement estimates, including fair value measurements, if they meet the definition of CAM, AS 2501 (Revised) does not include any additional reporting requirements.

Require the Auditor To Develop an Independent Expectation

Given the variety of types of accounting estimates and the ways in which they are developed, the Board is retaining the three common approaches from the existing standards for auditing accounting estimates, including fair value measurements. In addition, the new standard continues to require the auditor to determine what substantive procedures are responsive to the assessed risks of material misstatement.

The Board considered, but determined not to pursue, requiring the auditor to develop an independent expectation for certain estimates, or when an estimate gives rise to a significant risk. Some members of the Board's advisory groups advocated for a requirement for the auditor to develop an independent expectation in addition to testing management's process. In addition, some SAG members suggested a requirement for the auditor to develop an independent expectation rather than test management's process. Finally, a few commenters on the proposal stated that auditors should develop independent estimates in addition to testing management's process. Although requiring an independent expectation could help reduce the risk of anchoring bias, it may not always be feasible. For some accounting estimates, the data and significant assumptions underlying the estimate often depend on internal company information. Also, developing a customized method or model for a particular company's estimate may not be practical, and a more general method or model could be less precise than the company's own model. In those situations, the auditor may not have a reasonable alternative to testing the company's process.

Require Additional Audit Procedures When an Accounting Estimate Gives Rise to Significant Risk

The Board considered including additional requirements when an accounting estimate gives rise to a significant risk, either more broadly or specifically when a wide range of measurement uncertainty exists. Alternatives considered included:

- Establishing that certain estimates are presumed to give rise to a significant risk (*e.g.,* the allowance for loan losses).
- Establishing specific procedures that would depend on the risk determined to be significant (*e.g.,* the use of a complex model determined to give rise to a significant risk would result in the auditor being required to perform specific procedures on that model).
- Including a requirement, similar to those in AU–C Section 540, *Auditing Accounting Estimates, Including Fair Value Accounting Estimates, And Related Disclosures* (''AU–C 540''),[156] for the auditor to evaluate how management has considered alternative assumptions or outcomes and why it has rejected them when significant measurement uncertainty exists.

Including additional requirements when an estimate gives rise to a significant risk would mandate the auditor to direct additional attention to that risk. AS 2301, however, already requires an auditor to perform substantive procedures, including tests of details that are specifically responsive to the assessed risks of material misstatement. This includes circumstances when the degree of complexity or judgment in the recognition or measurement of financial information related to the risk, especially those measurements involving a wide range of measurement uncertainty, give rise to a significant risk.[157] Further, with respect to critical accounting estimates,[158] the new standard and related amendments require the auditor to obtain an understanding of how management analyzed the sensitivity of its significant assumptions to change, based on other reasonably likely outcomes that would have a material effect on its financial condition or operating performance,[159] and to take that understanding into account when evaluating the reasonableness of the significant assumptions and potential for management bias.

Thus, requiring specific procedures for accounting estimates that give rise to significant risks would be duplicative in some ways of the existing requirement in AS 2301 as well as those set forth by the new standard, and could result in additional audit effort without significantly improving audit quality. Additionally, including prescriptive requirements for significant risks could result in the auditor performing only the required procedures when more effective procedures exist, or could provide disincentives for the auditor to deem a risk significant in order to avoid performing the additional procedures.

Accordingly, the Board did not adopt these alternatives in favor of retaining the existing requirement in AS 2301.

[155] *See The Auditor's Report on an Audit of Financial Statements When the Auditor Expresses an Unqualified Opinion and Related Amendments to PCAOB Standards,* PCAOB Release No. 2017–001 (June 1, 2017).

[156] *See* paragraph 15a of AU–C 540.

[157] *See* AS 2301.11 and AS 2110.71f.

[158] *See* paragraph .A3 of AS 1301, *Communications with Audit Committees.*

[159] *See Commission Guidance Regarding Management's Discussion and Analysis of Financial Condition and Results of Operations,* Release No. 33–8350.

Special Considerations for Audits of Emerging Growth Companies

Pursuant to Section 104 of the Jumpstart Our Business Startups (''JOBS'') Act, rules adopted by the Board subsequent to April 5, 2012, generally do not apply to the audits of EGCs unless the SEC ''determines that the application of such additional requirements is necessary or appropriate in the public interest, after considering the protection of investors, and whether the action will promote efficiency, competition, and capital formation.'' [160] As a result of the JOBS Act, the rules and related amendments to PCAOB standards the Board adopts are generally subject to a separate determination by the SEC regarding their applicability to audits of EGCs.

The proposal sought comments on the applicability of the proposed requirements to the audits of EGCs. Commenters on the issue supported applying the proposed requirements to audits of EGCs, citing benefits to the users of EGC financial statements and the risk of confusion and inconsistency if different methodologies were required for EGC and non-EGC audits. One commenter suggested ''phasing'' the implementation of the requirements for audits of EGCs to reduce the compliance burden.

To inform consideration of the application of auditing standards to audits of EGCs, the staff has also published a white paper that provides general information about characteristics of EGCs.[161] As of the November 15, 2017 measurement date, the PCAOB staff identified 1,946 companies that had identified themselves as EGCs in at least one SEC filing since 2012 and had filed audited financial statements with the SEC in the 18 months preceding the measurement date.

The Board believes that accounting estimates are common in the financial statements of many EGCs.[162] The Board also notes that any new PCAOB standards and amendments to existing standards determined not to apply to the audits of EGCs would require auditors to address the differing requirements within their methodologies, which would create the potential for confusion.[163] This would run counter to the objective of improving audit practice by setting forth a more uniform, risk-based approach to auditing accounting estimates, including fair value measurements.

Overall, the above discussion of benefits, costs, and unintended consequences is generally applicable to audits of EGCs. Since EGCs tend to be smaller public companies, their accounting estimates may be less likely to involve complex processes,[164] although those estimates may constitute some of the largest accounts in EGCs' financial statements. Furthermore, EGCs may generally be more subject to information asymmetry problems associated with accounting estimates than other issuers. EGCs generally tend to have shorter financial reporting histories than other exchange-listed companies and as a result, there is less information available to investors regarding such companies relative to the broader population of public companies. Although the degree of information asymmetry between investors and company management for a particular issuer is unobservable, researchers have developed a number of proxies that are thought to be correlated with information asymmetry, including small issuer size, lower analyst coverage, larger insider holdings, and higher research and development costs.[165] To the extent that EGCs exhibit one or more of these properties, there may be a greater degree of information asymmetry for EGCs than for the broader population of companies, increasing the importance of the external audit to investors in enhancing the credibility of management disclosure.[166] The new standard and related amendments, which are intended to enhance audit quality, could increase the credibility of financial statement disclosures by EGCs.

When confronted with information asymmetry, investors may require a larger risk premium, and thus increase the cost of capital to companies.[167] Reducing information asymmetry, therefore, can lower the cost of capital to companies, including EGCs, by decreasing the risk premium required by investors.[168] Therefore, investors in EGCs may benefit as much as, if not more than, investors in other types of issuers as a result of the new standard and related amendments.

PCAOB staff gathered data from 2012–2016 reported inspection findings for issuer audits that were identified to be EGCs in the relevant inspection year.[169] The chart below shows the number of EGC audits with deficiencies related to the accounting estimates standard and fair value standard [170] based on the 2012–2016 reported inspection findings.[171] The data help demonstrate

[160] *See* Public Law 112–106 (Apr. 5, 2012). *See* Section 103(a)(3)(C) of the Sarbanes-Oxley Act, as added by Section 104 of the JOBS Act. Section 104 of the JOBS Act also provides that any rules of the Board requiring (1) mandatory audit firm rotation or (2) a supplement to the auditor's report in which the auditor would be required to provide additional information about the audit and the financial statements of the issuer (auditor discussion and analysis) shall not apply to an audit of an EGC. The new standard and related amendments do not fall within either of these two categories.

[161] *See* PCAOB white paper, *Characteristics of Emerging Growth Companies as of November 15, 2017* (Oct. 11, 2018) (''EGC White Paper''), available on the Board's website.

[162] The five SIC codes with the highest total assets as a percentage of the total assets for the EGC population are (i) real estate investment trusts; (ii) state commercial banks; (iii) national commercial banks; (iv) crude petroleum and natural gas; and (v) pharmaceutical preparations. *Id.* at 14–15. The financial statements of companies operating in these industries would likely have accounting estimates that include, for example, asset impairments and allowances for loan losses.

[163] Approximately 99% of EGCs were audited by accounting firms that also audit issuers that are not EGCs and 40% of EGC filers were audited by firms that are required to be inspected on an annual basis by the PCAOB because they issued audit reports for more than 100 issuers in the year preceding the measurement date. *See* EGC White Paper at 3.

[164] *See, e.g.,* the note to AS 2201.09, which provides that many smaller companies have less complex operations and that less complex business processes and financial reporting systems are a factor indicating less complex operations.

[165] *See, e.g.,* David Aboody and Baruch Lev, *Information Asymmetry, R&D, and Insider Gains,* 55 Journal of Finance 2747 (2000); Michael J. Brennan and Avanidhar Subrahmanyam, *Investment Analysis and Price Formation in Securities Markets,* 38 Journal of Financial Economics 361 (1995); Varadarajan V. Chari, Ravi Jagannathan, and Aharon R. Ofer, *Seasonalities in Security Returns: The Case of Earnings Announcements,* 21 Journal of Financial Economics 101 (1988); and Raymond Chiang, and P.C. Venkatesh, *Insider Holdings and Perceptions of Information Asymmetry: A Note,* 43 Journal of Finance 1041 (1988).

[166] *See, e.g.,* Molly Mercer, *How Do Investors Assess the Credibility of Management Disclosures?,* 18 Accounting Horizons 185, 189 (2004) (''[Academic studies] provide archival evidence that external assurance from auditors increases disclosure credibility . . . These archival studies suggest that bankers believe audits enhance the credibility of financial statements . . .'').

[167] *See, e.g.,* Lambert et al., *Information Asymmetry, Information Precision, and the Cost of Capital* 21.

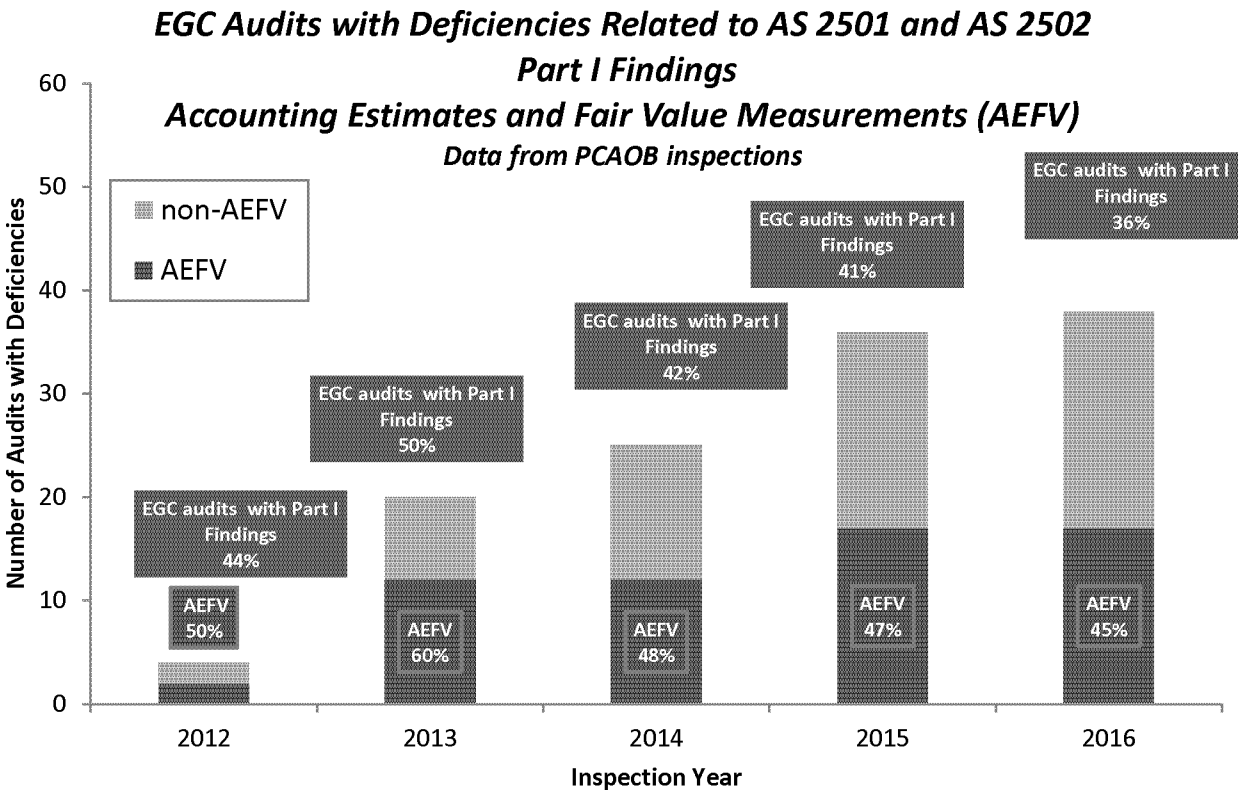
[168] For a discussion of how increasing reliable public information about a company can reduce risk premium, *see* Easley and O'Hara, *Information and the Cost of Capital* 1553.

[169] *See* EGC White Paper for the methodology used to identify EGCs.

[170] Deficiencies related to the derivatives standard were infrequent over the inspection period reviewed, and therefore considered insignificant for purposes of this analysis.

[171] The chart identifies the audits of EGCs with deficiencies reported in the public portion of inspection reports. It shows the relative frequency of EGC audits with deficiencies citing the existing accounting estimates standard or the existing fair value standard compared to the total EGC audits with deficiencies for that year. It also shows the frequency of inspected EGCs audits that had a deficiency. For example, in inspection year 2013, 50% of the EGC audits that were inspected had a deficiency and 60% of the audits with deficiencies included at least one deficiency citing the accounting estimates standard or the fair value standard (total 2016 reported inspection findings are based on preliminary results).

the high frequency of deficiencies related to the existing estimates and fair value standards in the audits of EGCs, raising questions about whether professional skepticism is being appropriately applied and about overall audit quality in this area. The EGC audits that had deficiencies related to the existing estimates and fair value standards as a proportion of total EGC audits that had deficiencies (including deficiencies in internal control over financial reporting) have remained relatively high (45%–60%) for the 2012–2016 period.



The Board has provided this analysis to assist the SEC in its consideration of whether it is ''necessary or appropriate in the public interest, after considering the protection of investors and whether the action will promote efficiency, competition, and capital formation,'' to apply the new standard and related amendments to audits of EGCs.

For the reasons explained above, the Board believes that the new standard and related amendments are in the public interest and, after considering the protection of investors and the promotion of efficiency, competition, and capital formation, recommends that the new standard and related amendments apply to audits of EGCs. Accordingly, the Board recommends that the Commission determine that it is necessary or appropriate in the public interest, after considering the protection of investors and whether the action will promote efficiency, competition, and capital formation, to apply the new standard and related amendments to audits of EGCs. The Board stands ready to assist the Commission in considering any comments the Commission receives on these matters during the Commission's public comment process.

Applicability to Audits of Brokers and Dealers

The proposal indicated that the proposed standard and amendments would apply to audits of brokers and dealers, as defined in Sections 110(3)–(4) of the Sarbanes-Oxley Act. The Board solicited comment on any factors specifically related to audits of brokers and dealers that may affect the application of the proposed amendments to those audits. Commenters that addressed the issue agreed that the proposal should apply to these audits, citing benefits to users of financial statements of broker and dealers and the risk of confusion and inconsistency if different methodologies were required under PCAOB standards for audits of different types of entities.

After considering comments, the Board determined that the new standard and related amendments, if approved by the SEC, will be applicable to all audits performed pursuant to PCAOB standards, including audits of brokers and dealers.

The information asymmetry between the management and the customers of brokers and dealers about the brokers' and dealers' financial condition may be significant and of particular interest to customers, as the brokers or dealers may have custody of customers assets, which could become inaccessible to the customers in the event of an insolvency. In addition, unlike the owners of brokers and dealers, who themselves may be managers and thus may be subject to minimal or no information asymmetry, customers of brokers and dealers may, in some instances, be large in number and may not be expert in the management or operation of brokers and dealers. Such information asymmetry between the management and the customers of brokers and dealers increases the role of auditing in enhancing the reliability of financial information, especially given that the use of estimates, including fair value measurements, is prevalent among brokers and dealers. The provision to regulatory agencies of reliable and accurate accounting estimates on brokers' and dealers' financial statements may enable these agencies to

more effectively monitor these important market participants. Improved audits may help prevent accounting fraud that affects brokers' and dealers' customers and that may be perpetrated, for example, through manipulated valuations of securities. Therefore, the new standard should benefit customers and regulatory authorities of brokers and dealers by increasing confidence that brokers and dealers are able to meet their obligations to their customers and are in compliance with regulatory requirements.

Accordingly, the discussion above of the need for the new standard and related amendments, as well as the costs, benefits, alternatives considered, and potential unintended consequences to auditors and the companies they audit, also applies to audits of brokers and dealers. In addition, with respect to the impact of the new standard on customers of brokers and dealers, the expected improvements in audit quality described above would benefit such customers, along with investors, capital markets and auditors, while the final requirements are not expected to result in any direct costs or unintended consequences to customers of brokers and dealers.

III. Date of Effectiveness of the Proposed Rules and Timing for Commission Action

Pursuant to Section 19(b)(2)(A)(ii) of the Exchange Act, and based on its determination that an extension of the period set forth in Section 19(b)(2)(A)(i) of the Exchange Act is appropriate in light of the PCAOB's request that the Commission, pursuant to Section 103(a)(3)(C) of the Sarbanes-Oxley Act, determine that the proposed rules apply to the audits of EGCs, the Commission has determined to extend to July 3, 2019 the date by which the Commission should take action on the proposed rules.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rules are consistent with the requirements of Title I of 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/pcaob.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number PCAOB–2019–02 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 PCAOB–2019–02. 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/pcaob.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rules that are filed with the Commission, and all written communications relating to the proposed rules 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, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the PCAOB. All comments received will be posted without charge. 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 PCAOB–2019–02 and should be submitted on or before April 25, 2019.

For the Commission, by the Office of the Chief Accountant, by delegated authority.[172]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–06426 Filed 4–3–19; 8:45 am]

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[172] 17 CFR 200.30–11(b)(1) and (3).

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Part III

Securities and Exchange Commission

Public Company Accounting Oversight Board; Notice of Filing of Proposed Rules on Amendments to Auditing Standards for Auditor's Use of the Work of Specialists; Notice

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85435; File No. PCAOB–2019–03]

Public Company Accounting Oversight Board; Notice of Filing of Proposed Rules on Amendments to Auditing Standards for Auditor's Use of the Work of Specialists

March 28, 2019.

Pursuant to Section 107(b) of the Sarbanes-Oxley Act of 2002 (the ''Act'' or ''Sarbanes-Oxley Act''), notice is hereby given that on March 20, 2019, the Public Company Accounting Oversight Board (the ''Board'' or ''PCAOB'') filed with the Securities and Exchange Commission (the ''Commission'' or ''SEC'') the proposed rules described in Items I and II below, which items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the proposed rules from interested persons.

I. Board's Statement of the Terms of Substance of the Proposed Rules

On December 20, 2018, the Board adopted amendments to auditing standards for using the work of specialists (collectively, the ''proposed rules''), including amendments to two existing auditing standards and the retitling and replacement of a third standard with an updated standard. The text of the proposed rules appears in Exhibit A to the SEC Filing Form 19b–4 and is available on the Board's website at *https://pcaobus.org/Rulemaking/Pages/docket-044-auditors-use-work-specialists.aspx* and at the Commission's Public Reference Room.

II. Board's Statement of the Purpose of, and Statutory Basis for, the Proposed Rules

In its filing with the Commission, the Board included statements concerning the purpose of, and basis for, the proposed rules and discussed any comments it received on the proposed rules. The text of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements. In addition, the Board is requesting that, pursuant to Section 103(a)(3)(C) of the Sarbanes-Oxley Act, the Commission approve the proposed rules for application to audits of emerging growth companies (''EGCs'').[1] The Board's request is set forth in section D.

A. Board's Statement of the Purpose of, and Statutory Basis for, the Proposed Rules

(a) Purpose

Summary

The Board has adopted amendments to its standards for using the work of specialists (*i.e.,* a person or firm possessing special skill or knowledge in a particular field other than accounting or auditing), including amendments to two existing auditing standards and the retitling and replacement of a third standard with an updated standard. The amendments are intended to enhance investor protection by strengthening the requirements for evaluating the work of a company's specialist, whether employed or engaged by the company, and applying a supervisory approach to both auditor-employed and auditor-engaged specialists. The amendments are also designed to be risk-based and scalable, so that the auditor's work effort to evaluate the specialist's work is commensurate with the risk of material misstatement associated with the financial statement assertion to which the specialist's work relates and the significance of the specialist's work to that assertion. These amendments should lead to more uniformly rigorous practices among audit firms of all sizes and enhance audit quality and the credibility of information provided in financial statements.

Companies across many industries use specialists to assist in developing accounting estimates in their financial statements. Companies may also use specialists to interpret laws, regulations, and contracts or to evaluate the characteristics of certain physical assets. Those companies may use a variety of specialists, including actuaries, appraisers, other valuation specialists, legal specialists, environmental engineers, and petroleum engineers. Auditors often use the work of these companies' specialists as audit evidence. Additionally, auditors frequently use the work of auditors' specialists to assist in their evaluation of significant accounts and disclosures, including accounting estimates in those accounts and disclosures.

As financial reporting frameworks continue to evolve and require greater use of estimates, including those based on fair value measurements, accounting estimates have become both more prevalent and significant. As a result, the use of the work of specialists also continues to increase in both frequency and significance. If a specialist's work is not properly overseen or evaluated by the auditor, there may be a heightened risk that the auditor's work will not be sufficient to detect a material misstatement in accounting estimates.

To address this challenge, the Board has adopted amendments to its auditing standards that primarily relate to auditors' use of the work of specialists. First, AS 1105, *Audit Evidence,* is being amended to add a new Appendix A that addresses using the work of a company's specialist as audit evidence, based on the risk-based approach of the risk assessment standards.

New Appendix A of AS 1105

- Supplements the requirements in AS 1105 for circumstances when the auditor uses the work of the company's specialist as audit evidence, including requirements related to:
- Obtaining an understanding of the work and report(s), or equivalent communication, of the company's specialist(s) and related company processes and controls;
- Obtaining an understanding of, and assessing, the knowledge, skill, and ability of a company's specialist and the entity that employs the specialist (if other than the company) and the relationship to the company of the specialist and the entity that employs the specialist (if other than the company); and
- Performing procedures to evaluate the work of a company's specialist, including evaluating: (i) The data, significant assumptions, and methods (which may include models) used by the specialist, and (ii) the relevance and reliability of the specialist's work and its relationship to the relevant assertion.
- Aligns the requirements for using the work of a company's specialist with the risk assessment standards and the standard and related amendments adopted by the Board on auditing accounting estimates, including fair value measurements.
- Sets forth factors for determining the necessary evidence to support the auditor's conclusion regarding a relevant assertion when using the work of a company's specialist.

Second, the Board has also amended AS 1201, *Supervision of the Audit Engagement,* by adding a new Appendix C on supervising the work of auditor-employed specialists, and retitling and replacing AS 1210, *Using the Work of a Specialist* (''existing AS 1210''), with new AS 1210, *Using the Work of an Auditor-Engaged Specialist* (''AS 1210, as amended''), which sets forth

[1] The term ''emerging growth company'' is defined in Section 3(a)(80) of the Securities Exchange Act of 1934 (the ''Exchange Act'') (15 U.S.C. 78c(a)(80)). *See also Inflation Adjustments and Other Technical Amendments Under Titles I and III of the JOBS Act,* Release No. 33–10332 (Mar. 31, 2017), 82 FR 17545 (Apr. 12, 2017).

requirements for using the work of auditor-engaged specialists.

New Appendix C of AS 1201

- Supplements the requirements for applying the supervisory principles in AS 1201.05–.06 when using the work of an auditor-employed specialist to assist the auditor in obtaining or evaluating audit evidence, including requirements related to:
- Informing the auditor-employed specialist of the work to be performed;
- Coordinating the work of the auditor-employed specialists with the work of other engagement team members; and
- Reviewing and evaluating whether the work of the auditor-employed specialist provides sufficient appropriate evidence. Evaluating the work of the specialist includes evaluating whether the work is in accordance with the auditor's understanding with the specialist and whether the specialist's findings and conclusions are consistent with, among other things, the work performed by the specialist.
- Sets forth factors for determining the necessary extent of supervision of the work of the auditor-employed specialist.

AS 1210, as Amended

- Establishes requirements for using the work of an auditor-engaged specialist to assist the auditor in obtaining or evaluating audit evidence;
- Includes requirements for reaching an understanding with an auditor-engaged specialist on the work to be performed and reviewing and evaluating the specialist's work that parallel the final amendments to AS 1201 for auditor-employed specialists;
- Sets forth factors for determining the necessary extent of review of the work of the auditor-engaged specialist;
- Amends requirements related to assessing the knowledge, skill, ability, and objectivity of the auditor-engaged specialist; and
- Describes objectivity, for these purposes, as the auditor-engaged specialist's ability to exercise impartial judgment on all issues encompassed by the specialist's work related to the audit, and specifies the auditor's obligations when the specialist or the entity that employs the specialist has a relationship with the company that affects the specialist's objectivity.

The final amendments strengthen the requirements for evaluating the work of a company's specialist and for supervising and evaluating the work of both auditor-employed and auditor-engaged specialists. The amendments also eliminate certain provisions of existing PCAOB standards, under which:

- The auditor has the same responsibilities under existing AS 1210 with respect to both a company's specialist and an auditor-engaged specialist, even though those specialists have fundamentally different roles (*i.e.,* the company uses the work of its specialist in the preparation of the financial statements); and
- Auditor-employed specialists, but not auditor-engaged specialists, are subject to risk-based supervision, even though both serve similar roles in helping auditors obtain and evaluate audit evidence.

The Board adopted the final amendments after substantial outreach, including two rounds of public comment. In May 2015, the PCAOB issued a staff consultation paper to solicit views on various issues, including the potential need for standard setting. In June 2017, the Board requested comments on proposed amendments to the standards on using the work of specialists. The Board received comments on the staff consultation paper and the proposal. The Board's Standing Advisory Group (''SAG'') also discussed this issue at several meetings. Commenters generally supported the Board's objective of improving the quality of audits involving specialists, and suggested areas to further improve the amendments, modify proposed requirements that would not likely improve audit quality, and clarify the application of the amendments. In adopting these amendments, the Board has taken into account all of these comments and discussions, as well as observations from PCAOB oversight activities.

In its consideration of the final amendments, the Board is mindful of the significant advances in technology that have occurred in recent years, including increased use of data analysis tools and emerging technologies. An increased use of technology-based tools, together with future developments in the use of data and technology, could have a fundamental impact on the audit process. The Board is actively exploring these potential impacts through ongoing staff research and outreach. For example, the PCAOB staff is currently researching the effects on auditing of data analytics, artificial intelligence, distributed ledger technology, and other emerging technology, assisted by a task force of the SAG.[2]

In the context of this rulemaking, the Board considered how changes in technology could affect the use of specialists by companies, the use of the work of companies' specialists by auditors as audit evidence, and the use of auditor-employed and auditor-engaged specialists by auditors to obtain and evaluate audit evidence. The Board believes that the final amendments are sufficiently principles-based and flexible to accommodate continued advances in the use of data and technology by both companies and auditors. The Board will continue to monitor advances in this area and any effect they may have on the application of the final amendments.

The amendments will apply to all audits conducted under PCAOB standards. Subject to approval by the Commission, the amendments take effect for audits for fiscal years ending on or after December 15, 2020.

(b) Statutory Basis

The statutory basis for the proposed rules is Title I of the Act.

B. Board's Statement on Burden on Competition

Not applicable. The Board's consideration of the economic impacts of the proposed rules is discussed in section D below.

C. Board's Statement on Comments on the Proposed Rules Received From Members, Participants or Others

The Board released the proposed rules for public comment in *Proposed Amendments to Auditing Standards for Auditor's Use of the Work of Specialists,* PCAOB Release No. 2017–003 (June 1, 2017) (''Proposal''). The PCAOB also issued for public comment *Staff Consultation Paper No. 2015–01, The Auditor's Use of the Work of Specialists* (May 28, 2015) (''SCP''). Copies of Release No. 2017–003, the SCP, and the comment letters received in response to the PCAOB's requests for comment are available on the PCAOB's website at *https://pcaobus.org/Rulemaking/Pages/docket-044-auditors-use-work-specialists.aspx.* The PCAOB received 80 written comment letters. The Board's response to the comments received and the changes made to the rules in response to the comments received are discussed below.

Background

Companies across many industries use various types of specialists to assist in developing accounting estimates in

[2] *See* PCAOB, *Changes in Use of Data and Technology in the Conduct of Audits, available at https://pcaobus.org/Standards/research-standard-setting-projects/Pages/data-technology.aspx.*

their financial statements.[3] Companies may also use specialists to interpret laws, regulations, and contracts or to evaluate the characteristics of certain physical assets. Those companies may use a variety of specialists, including actuaries, appraisers, other valuation specialists, legal specialists, environmental engineers, and petroleum engineers. Auditors often use the work of these companies' specialists as audit evidence. In addition, auditors frequently use the work of auditors' specialists to assist in their evaluation of significant accounts and disclosures, including accounting estimates in those accounts and disclosures.

The use of fair value measurements and other accounting estimates continues to grow in financial reporting with, for example, increasing complexity in business transactions and changes in the financial reporting frameworks. As a result, the use of the work of specialists continues to increase in both frequency and significance.[4] If a specialist's work is not properly overseen or evaluated, however, there is heightened risk that the auditor's work will not be sufficient to detect a material misstatement in accounting estimates.

The amendments to the standards for using the work of specialists are intended to improve audit quality by strengthening the requirements for evaluating the work of a company's specialist and applying a risk-based supervisory approach to both auditor-employed and auditor-engaged specialists. These enhancements should also lead to improvements in practices, commensurate with the associated risk, among audit firms of all sizes. The expected increase in audit quality should also enhance the credibility of information provided to investors.

Rulemaking History

The amendments to the auditing standards adopted by the Board (''final amendments'' or ''final requirements'') reflect public comments on both the SCP and the Proposal. In May 2015, the PCAOB issued the SCP to solicit comments on various issues related to the auditor's use of the work of a company's specialist and an auditor's specialist, including possible approaches for changes to PCAOB standards and the potential economic impacts of those alternatives.

In June 2017, the PCAOB issued the Proposal to solicit comments on amendments to PCAOB standards to strengthen the requirements for the auditor's use of the work of specialists. The Proposal was informed by comments on the SCP. The Board received 35 comment letters on the Proposal from commenters across a range of affiliations. The final amendments are informed by comments on the Proposal. Those comments are discussed throughout this notice.

In addition, the Board's approach has been informed by, among other things: (1) Observations from PCAOB oversight activities and SEC enforcement actions; (2) the International Auditing and Assurance Standards Board's (''IAASB'') and the American Institute of Certified Public Accountants' Auditing Standards Board's auditing standards and IAASB's post-implementation review;[5] (3) substantial outreach, including discussions with members of the SAG;[6] and (4) the results of academic research.

Overview of Existing Requirements

The primary standard that applies when auditors use the work of auditor-engaged specialists or company specialists is existing AS 1210. The primary standard that applies when auditors use the work of auditor-employed specialists in an audit is AS 1201. Existing AS 1210 was adopted by the Board in 2003 shortly after the PCAOB's inception.[7] AS 1201 was one of eight risk assessment standards adopted by the Board in 2010.[8]

Existing AS 1210 provides that a specialist is ''a person (or firm) possessing special skill or knowledge in a particular field other than accounting or auditing.''[9] Existing AS 1210 also states that income taxes and information technology (''IT'') are specialized areas of accounting and auditing, and therefore are outside the scope of the standard.[10] Existing AS 1210 applies when (1) a company engages or employs a specialist and the auditor uses that specialist's work as evidence in performing substantive tests to evaluate material financial statement assertions or (2) an auditor engages a specialist and uses that specialist's work as evidence in performing substantive tests to evaluate material financial statement assertions.[11]

AS 1201 establishes requirements for the supervision of the audit engagement, including supervising the work of engagement team members.[12] The auditor supervises a specialist employed by the auditor's firm who participates in the audit under AS 1201.[13] As members of the engagement team under PCAOB auditing standards, auditor-employed specialists are to be assigned based on their knowledge, skill, and ability.[14] AS 1201 also applies in situations in which persons with specialized skill or knowledge in IT or income taxes participate in the audit, regardless of whether they are employed or engaged by the auditor's firm.[15]

Using the work of a company's specialist and an auditor-engaged specialist under existing AS 1210. Existing AS 1210 requires that the auditor perform the following procedures when using the work of a company's specialist or an auditor-engaged specialist:

- Evaluate the professional qualifications of the specialist;[16]
- Obtain an understanding of the nature of the specialist's work;[17]
- Evaluate the relationship of the specialist to the company, including circumstances that might impair the specialist's objectivity;[18] and

[3] As used in this notice, a specialist is a person (or firm) possessing special skill or knowledge in a particular field other than accounting or auditing.

[4] *See, e.g.,* Karin Barac, Elizabeth Gammie, Bryan Howieson, and Marianne van Staden, *The Capability and Competency Requirements of Auditors in Today's Complex Global Business Environment,* at 83 (Mar. 2016) (report commissioned by the Institute of Chartered Accountants of Scotland and the Financial Reporting Council) (stating that ''audit teams now include many more experts than in the past, and for some industries, particularly financial services, this was a welcome development.'').

[5] *See* IAASB, *Clarified International Standards on Auditing—Findings from the Post-Implementation Review,* at 44–45 (July 2013).

[6] *See* SAG meeting briefing papers and webcast archives (Nov. 29–30, 2017, Nov. 30–Dec. 1, 2016, Nov. 12–13, 2015, June 18, 2015, Oct. 14–15, 2009, and Feb. 9, 2006), available on the Board's website.

[7] *See Establishment of Interim Professional Auditing Standards,* PCAOB Release No. 2003–006 (Apr. 18, 2003). AS 1210 was originally adopted by the PCAOB as AU sec. 336. The PCAOB renumbered AU sec. 336 as AS 1210 when it reorganized its auditing standards. *See Reorganization of PCAOB Auditing Standards and Related Amendments to PCAOB Standards and Rules,* PCAOB Release No. 2015–002 (Mar. 31, 2015).

[8] *See Auditing Standards Related to the Auditor's Assessment of and Response to Risk and Related Amendments to PCAOB Standards,* PCAOB Release No. 2010–004 (Aug. 5, 2010). Prior to 2010, auditors supervised employed specialists under AU sec. 311, *Planning and Supervision.* Additionally, paragraph .16 of AS 2101, *Audit Planning,* requires the auditor to determine whether specialized skill or knowledge is needed to perform appropriate risk assessments, plan or perform audit procedures, or evaluate audit results.

[9] *See* existing AS 1210.01.

[10] *See* footnote 1 of existing AS 1210.

[11] *See* existing AS 1210.03.

[12] *See* AS 1201.01.

[13] *See* AS 1201.05–.06.

[14] *See* paragraph .05a of AS 2301, *The Auditor's Responses to the Risks of Material Misstatement,* and paragraph .06 of AS 1015, *Due Professional Care in the Performance of Work.* In addition, the requirements in PCAOB auditing standards for determining compliance with independence and ethics requirements also include assessing the independence of auditor-employed specialists. *See* AS 2101.06b.

[15] *See* footnote 1 of existing AS 1210.

[16] *See* existing AS 1210.08.

[17] *See* existing AS 1210.09.

[18] *See* existing AS 1210.10–.11.

• In using the findings of the specialist: [19]

• Obtain an understanding of the methods and assumptions used by the specialist;

• Make appropriate tests of data provided to the specialist; and

• Evaluate whether the specialist's findings support the financial statement assertions.

Using the work of a company's specialist when auditing fair value measurements under AS 2502.[20] In circumstances when a company's specialist develops assumptions used in a fair value measurement and the auditor tests the company's process, the auditor is required to evaluate the reasonableness of those assumptions as if the assumptions were developed by the company,[21] as well as to comply with the requirements of existing AS 1210.

Supervising the work of auditor-employed specialists under AS 1201. This standard establishes requirements regarding the auditor's supervision of an audit engagement, including supervising the work of auditor-employed specialists and other members of the engagement team. AS 1201, as it relates to the supervision of auditor-employed specialists, provides that:

(1) The engagement partner and others who assist the engagement partner in supervising the audit should:

• Inform engagement team members of their responsibilities;

• Direct engagement team members to bring significant accounting and auditing issues arising during the audit to the attention of the engagement partner or other engagement team members performing supervisory activities; and

• Review the work of engagement team members to evaluate whether:

• The work was performed and documented;

• The objectives of the procedures were achieved; and

• The results of the work support the conclusions reached.[22]

(2) The necessary extent of supervision depends on, for example, the nature of the work performed, the associated risks of material misstatement, and the knowledge, skill, and ability of those being supervised.[23]

Existing Practice

The PCAOB's understanding of audit practice at both larger audit firms [24] and smaller audit firms [25] under existing PCAOB standards has been informed by, among other things, the collective experience of PCAOB staff, observations from oversight activities of the Board, enforcement actions of the SEC, comments received on the Proposal, and discussions with the SAG, audit firms, and specialist entities.

These discussions have included outreach by the PCAOB staff to audit firms and specialist entities to obtain information on: (1) How auditors evaluate the competence and objectivity of auditor-engaged specialists and company specialists; (2) how auditors evaluate the work performed by an auditor-employed specialist, an auditor-engaged specialist, and a company's specialist; and (3) economic and demographic considerations relating to the market for services provided by specialists. The outreach has informed the PCAOB's understanding of existing practice at both larger and smaller audit firms. Most commenters who addressed the topic agreed that the Proposal accurately described existing audit practices regarding the use of the work of specialists. Commenters also generally supported the PCAOB's assessment that the use and importance of specialists has increased due to increasing complexity in business transactions and financial reporting requirements.

Overview of Existing Practice

When existing AS 1210 was originally issued in the early 1970s, the use of the work of specialists was largely confined to pension obligations, insurance reserves, and extractive industry reserves. Since then, the use of the work of specialists has increased in both frequency and significance.

Companies across many industries use the work of specialists to: (1) Assist them in developing accounting estimates, including fair value measurements presented in the companies' financial statements; (2) interpret laws, regulations, and contracts; or (3) evaluate characteristics of physical assets, as shown in Figure 1 below. In those circumstances, the reliability of a company's financial statements may depend in part on the quality of the work of a company's specialist.

[19] *See* existing AS 1210.12.

[20] AS 2502, *Auditing Fair Value Measurements and Disclosures,* is being superseded in a separate PCAOB release. *See Auditing Accounting Estimates, Including Fair Value Measurements and Amendments to PCAOB Auditing Standards,* PCAOB Release No. 2018–005 (Dec. 20, 2018) (''Estimates Release'').

[21] *See* footnote 2 of AS 2502.

[22] *See* AS 1201.05.

[23] *See* AS 1201.06.

[24] Unless otherwise indicated, the term ''larger audit firms'' refers to U.S. audit firms that are registered with the PCAOB and issue audit reports for more than 100 issuers (and are therefore annually inspected by the PCAOB). This term also refers to non-U.S. audit firms that are registered with the PCAOB and affiliated with one of the six largest global networks, based on information on network affiliations reported by non-US. audit firms on Form 2 in 2017 and identified on the ''Global Network'' overview page, available on the Board's website.

[25] Unless otherwise indicated, the term ''smaller audit firms'' refers to PCAOB-registered audit firms that do not meet the definition of a ''larger audit firm'' as provided in footnote 24. These firms generally consist of firms that issued audit reports for 100 or fewer issuers and are not affiliated with any of the six largest global networks identified on the ''Global Network'' overview page, available on the Board's website.

FIGURE 1: EXAMPLES OF ACTIVITIES THAT INVOLVE THE WORK OF SPECIALISTS

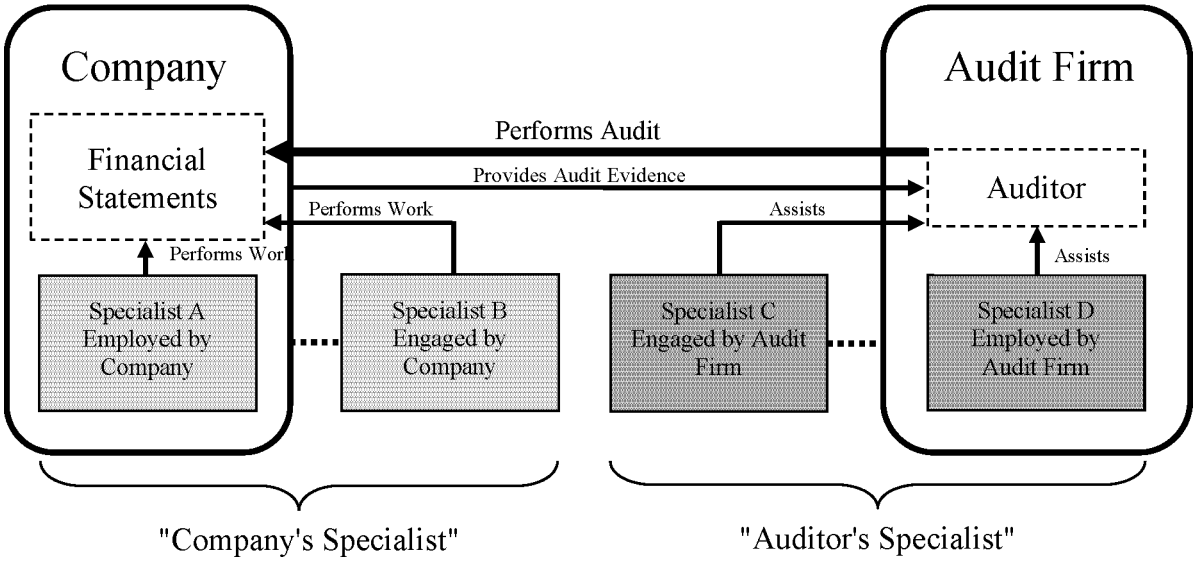
Valuation:
Assets acquired and liabilities assumed in business combinations
Environmental remediation contingencies
Goodwill impairments
Insurance reserves
Intangible assets
Pension and other post-employment obligations
Impairment of real estate or other long-term assets
Financial instruments
Legal interpretations:
Legal title to property
Laws, regulations, or contracts
Evaluation of physical and other characteristics:
Materials stored in stockpiles
Mineral reserves and condition
Oil and gas reserves
Property, plant, and equipment useful lives and salvage values

Auditors also increasingly use the work of specialists in their audits. Auditors may:

- Use the work of a company's specialist—employed or engaged—as audit evidence; or
- Use the work of an auditor's specialist—employed or engaged—to assist the auditor in obtaining and evaluating audit evidence.

Figure 2 illustrates potential ways that auditors use specialists in an audit.

Figure 2: Potential Ways Auditors Use Specialists in an Audit



The company's specialist (A and B above) is employed or engaged by the company to perform work that the company uses in preparing its financial statements, which the auditor may use as audit evidence with respect to auditing significant accounts and disclosures. The auditor's specialist (C and D above) performs work to assist the auditor in obtaining and evaluating audit evidence with respect to a relevant assertion of a significant account or disclosure.

The PCAOB understands that audit practices under existing PCAOB standards vary among smaller and larger audit firms when auditors use the work of a specialist in an audit.[26] For example, smaller audit firms are more likely to use the work of a company's specialist than to employ or engage their own specialist. Larger audit firms generally require their engagement teams to evaluate the work of the company's specialist, including the specialist's methods and assumptions, and often employ specialists to assist their audit personnel in evaluating that work.[27] The following paragraphs discuss in more detail the practices of smaller firms and larger firms in audits of issuers, brokers, and dealers under existing PCAOB standards.

Smaller firm practices. Smaller firm practices generally are based on the required procedures in existing PCAOB standards, primarily existing AS 1210. Smaller firms typically evaluate the

[26] As discussed in section D, an analysis of inspection data by PCAOB staff suggests that larger audit firms generally use the work of specialists more often than smaller audit firms do.

[27] An analysis by PCAOB staff indicates that smaller firms predominantly use the work of an auditor's specialist in valuation areas, and seldom use the work of an auditor's specialist in other areas, whereas larger firms tend to use the work of an auditor's specialist in a wider range of audit areas, even though they also primarily use the work of specialists in valuation areas.

competence, relationships to the company, and work of the company's specialist through inquiries of the company's specialist. For example, smaller firms may send a company's specialist a questionnaire to obtain information regarding the specialist's professional qualifications and the existence of relationships with the company that could impair the specialist's objectivity. Further, smaller firms typically do not evaluate the appropriateness of a specialist's methods (it is not required by existing AS 1210), and any evaluation by smaller firms of the assumptions of a company's specialist is generally confined to circumstances when the specialist develops assumptions used in a fair value measurement covered by AS 2502.

In circumstances when smaller firms engage an auditor's specialist, some firms perform the procedures specified in existing AS 1210. Other firms perform procedures similar to those in AS 1201 for supervising members of the engagement team. For example, some firms evaluate whether the auditor-engaged specialist's work supports the financial statement assertions, while other firms go further by also evaluating whether (1) the specialist's work was performed and documented, (2) the objectives of the specialist's procedures were achieved, and (3) the results of the specialist's work support the conclusions reached. One commenter noted that smaller firms may also use an auditor's specialist in evaluating the work of a company's specialist.

Larger firm practices. Some larger audit firms evaluate the methods and assumptions used by company specialists when they test the company's process for developing accounting estimates, even though this evaluation is currently required only for significant assumptions developed by the company's specialist in conjunction with fair value measurements and disclosures.[28] Many larger firms employ their own specialists, who serve on engagement teams and assist with the evaluation of the work of company specialists.

Auditor-employed specialists at larger firms are generally involved early in the audit, usually during planning meetings with other members of the engagement team. Also, in planning the audit, auditors generally reach an understanding with auditor-employed specialists, documented in a memorandum, regarding the scope of work to be performed and the respective responsibilities of the auditor and the specialist. The items covered in that memorandum typically include: (1) The nature, scope, and objectives of the specialist's work;[29] (2) the role and responsibilities of the auditor and the specialist;[30] and (3) the nature, timing, and extent of communication between the auditor and the specialist.[31] The auditor communicates with the specialist as the work progresses to become aware of issues as they arise. When the specialist completes his or her work, the auditor reviews the specialist's work, which is typically documented in a separate report or memorandum.

In some instances, larger firms may use the work of a company's specialist without involving an auditor's specialist, particularly when the risk of material misstatement is low or the firm does not employ a specialist with expertise in the particular field. Alternatively, although infrequently, larger firms may engage a specialist with expertise in the particular field. When larger firms engage specialists, some firms perform the procedures specified in existing AS 1210 described above. Other firms perform procedures in such situations that are similar to the procedures for supervising the work of auditor-employed specialists under AS 1201.

Observations From Audit Inspections and Enforcement Cases

The Board's understanding of audit practice under existing PCAOB standards has been informed in part by observations from PCAOB oversight activities and SEC enforcement actions, including (1) audit deficiencies of both larger and smaller firms, and related remedial actions to address the deficiencies and (2) enforcement actions where the work of a specialist was used in the audit.

Inspections observations. Over the past several years, the observations from PCAOB inspections have included instances in which the auditor used the work of a company's specialist without performing the procedures required by existing PCAOB standards.[32] Recent findings include instances in which auditors did not: (1) Evaluate the reasonableness of assumptions used by a company's specialist in developing fair value measurements; (2) obtain an understanding of methods or assumptions used by the company's specialist; (3) test the accuracy and completeness of company-provided data used by the company's specialist; or (4) evaluate the professional qualifications of the company's specialist.

Over the past several years, the observations from PCAOB inspections also have indicated that auditors, at times, did not fulfill their responsibilities under existing standards when using the work of an auditor's specialist. These findings were more common than those related to using the work of a company's specialist over the same period. The observations included instances in which auditors did not: (1) Reach an understanding with the specialist regarding his or her responsibilities; (2) adequately evaluate the work performed by the specialist; or (3) consider contradictory evidence identified by the specialist or resolve discrepancies or other concerns that the specialist identified. More recently, PCAOB inspection staff have observed a decline in the number of instances by some firms in which auditors did not perform sufficient procedures related to the work of an auditor's specialist.

There are indications that some firms have undertaken remedial actions in response to the findings related to the auditor's use of the work of an auditor's specialist. In most cases, such actions included enhancements to firm methodologies to improve coordination between the auditor and the auditor's specialist through earlier and more frequent communications. These enhancements may have contributed, at least in part, to the decline in findings described above. Not all firms, however, have changed their methodologies, resulting in inconsistent practices in this area. In addition, unlike the findings related to the auditor's use of the work of an auditor's specialist, PCAOB inspections staff have not observed a similar change in the frequency of findings related to the auditor's use of the work of a company's specialist.

[28] *See* footnote 2 of AS 2502.

[29] Examples include whether the specialist is testing (or assisting in testing) the company's process for developing an accounting estimate or developing (or assisting in developing) an independent expectation of the estimate.

[30] For example, the documentation might identify the respective responsibilities of the auditor and the specialist for evaluating data, significant assumptions, and methods used by the company or the company's specialist.

[31] Examples include administrative matters, such as the timing, budget, and other staffing-related issues relevant to the specialist's work, or the protocols for discussing and resolving findings or issues identified by the specialist.

[32] *See* existing AS 1210 and AS 2502.

Enforcement actions. Both the SEC [33] and the PCAOB [34] have brought enforcement actions involving situations where auditors allegedly failed to comply with auditing standards when using the work of specialists. For example, such proceedings have involved allegations that auditors failed to (1) perform audit procedures to address the risks of material misstatements in a company's financial statements that were prepared in part based on the work of a company's specialist [35] or (2) comply with certain requirements of existing AS 1210 when using the work of a company's specialist (for example, requirements to evaluate the professional qualifications of the specialist, obtain an understanding of the methods and assumptions used by the specialist, evaluate the relationship of the specialist to the company, and apply additional procedures to address a material difference between the specialist's findings and the assertions in the financial statements).[36] Several of those proceedings were brought in recent years, suggesting that problems persist in this area.

Reasons To Improve Auditing Standards

The improvements to PCAOB standards are intended to direct auditors to devote more attention to the work of a company's specialist and enhance the coordination between an auditor and the auditor's specialist—employed or engaged. The final amendments also align with the Board's risk assessment standards and acknowledge more clearly the different roles of a company's specialist, an auditor-employed specialist, and an auditor-engaged specialist. The Board believes that these improvements will enhance both audit quality and the credibility of the information provided in a company's financial statements.

Areas of Improvement

The Board has identified two important areas where improvements are warranted to existing standards, discussed below: (1) Strengthening the requirements for evaluating the work of a company's specialist and (2) applying a risk-based supervisory approach to auditor-employed and auditor-engaged specialists.

Strengthening the Requirements for Evaluating the Work of a Company's Specialist

Existing AS 1210 is the primary standard that applies when auditors use the work of an auditor-engaged specialist or a company's specialist. By its terms, existing AS 1210 applies when (1) a company engages or employs a specialist and the auditor uses that specialist's work as evidence in performing substantive tests to evaluate material financial statement assertions or (2) an auditor engages a specialist and uses that specialist's work as evidence in performing substantive tests to evaluate material financial statement assertions.

In practice, however, a company's specialist and an auditor-engaged specialist have fundamentally different roles: The company uses the work of a specialist in the preparation of its financial statements, whereas an auditor's specialist performs work to assist the auditor in obtaining and evaluating audit evidence. By imposing the same requirements for using the work of a company's specialist and an auditor-engaged specialist, existing AS 1210 does not clearly reflect the different roles of such specialists.

In addition, existing AS 1210 does not expressly require an auditor to evaluate the appropriateness of a company specialist's methods and assumptions.[37] Instead, it requires the auditor to obtain an understanding of the methods and assumptions used by the specialist, a less rigorous procedure. Existing AS 1210 also includes certain provisions that circumscribe the auditor's responsibilities related to the work of a specialist, including statements that: (1) The appropriateness and reasonableness of methods and assumptions used, and their application, are the responsibility of the specialist; (2) the auditor ordinarily would use the work of the specialist unless the auditor's procedures lead him or her to believe the findings are unreasonable in the circumstances; and (3) if the auditor determines that the specialist's findings support the related assertions in the financial statements, he or she reasonably may conclude that sufficient appropriate evidential matter has been obtained.[38]

When an auditor uses the work of a company's specialist, the requirements in existing AS 1210 allow the auditor to plan and perform audit procedures that may not be commensurate with the risk of material misstatement inherent in the work of the specialist, thereby allowing the auditor to use the work and conclusions of a company's specialist without performing procedures to evaluate that specialist's work. Some audit firms, primarily larger firms, go beyond the requirements in existing AS 1210 and generally require their engagement teams to evaluate the work of a company's specialist, including the specialist's methods and assumptions, and often employ specialists to assist their audit personnel in evaluating that work. Existing audit practices in this regard, however, vary among firms.

The foregoing factors indicate that improvements to PCAOB standards for using the work of a company's specialists are needed and that increasing auditors' attention to the work of a company's specialists with respect to significant accounts and disclosures will enhance investor protection. In the Board's view, investor protection will be enhanced by requiring auditors to do more than merely obtain an understanding of the methods and significant assumptions used by the specialist.

Applying a Risk-Based Supervisory Approach to Both Auditor-Employed and Auditor-Engaged Specialists

The primary standard that applies when auditors use the work of an auditor-employed specialist in an audit is AS 1201. That standard establishes requirements regarding the auditor's supervision of the audit engagement, including supervision of a specialist employed by the auditor's firm who participates in the audit. While AS 1201 is risk-based and scalable, it does not specifically address how to apply its supervisory procedures to promote

[33] *See, e.g., KPMG LLP and John Riordan, CPA,* SEC Accounting and Auditing Enforcement Release (''AAER'') No. 3888 (Aug. 15, 2017); *Miller Energy Resources, Inc., Paul W. Boyd, CPA, David M. Hall, and Carlton W. Vogt, III, CPA,* AAER No. 3673 (Aug. 6, 2015); *Troy F. Nilson, CPA,* SEC AAER No. 3264 (Apr. 8, 2011); and *Accounting Consultants, Inc., and Carol L. McAtee, CPA,* SEC AAER No. 2447 (June 27, 2006).

[34] *See, e.g., Tarvaran Askelson & Company, LLP, Eric Askelson, and Patrick Tarvaran,* PCAOB Release No. 105–2018–001 (Feb. 27, 2018); *Grant Thornton LLP,* PCAOB Release No. 105–2017–054 (Dec. 19, 2017); *KAP Purwantono, Sungkoro & Surja, Roy Iman Wirahardja, and James Randall Leali,* PCAOB Release No. 105–2017–002 (Feb. 9, 2017); *Arturo Vargas Arellano, CPC,* PCAOB Release No. 105–2016–045 (Dec. 5, 2016); *Gordon Brad Beckstead, CPA,* PCAOB Release No. 105–2015–007 (Apr. 1, 2015); and *Chisholm, Bierwolf, Nilson & Morrill, LLC, Todd D. Chisholm, CPA, and Troy F. Nilson, CPA,* PCAOB Release No. 105–2011–003 (Apr. 8, 2011).

[35] *See, e.g., Gordon Brad Beckstead, CPA,* PCAOB Release No. 105–2015–007.

[36] *See, e.g., Grant Thornton LLP,* PCAOB Release No. 105–2017–054; *KAP Purwantono, Sungkoro & Surja,* PCAOB Release No. 105–2017–002; *Arturo Vargas Arellano, CPC,* PCAOB Release No. 105–2016–045; *Chisholm, Bierwolf, Nilson & Morrill, LLC,* PCAOB Release No. 105–2011–003; and *Miller Energy Resources, Inc.,* SEC AAER No. 3673.

[37] The evaluation of the reasonableness of assumptions developed by a company's specialist is required only in circumstances when the specialist develops assumptions used in a fair value measurement in accordance with AS 2502. AS 2502 is being superseded in a separate PCAOB release. *See* Estimates Release, *supra* note 20.

[38] *See* existing AS 1210.12–.13.

effective coordination between an auditor and a specialist and evaluation by the auditor of the work of an auditor-employed specialist.

The primary standard that applies when auditors use the work of an auditor-engaged specialist in an audit is existing AS 1210. The requirements in this standard differ from and are less rigorous than the requirements that apply when using auditor-employed specialists, even though auditor-employed and auditor-engaged specialists serve similar roles in helping auditors to obtain and evaluate audit evidence. For example, existing AS 1210 provides that the auditor should ''obtain an understanding'' of the nature of the work performed by an auditor-engaged specialist, including the objectives and scope of the specialist's work, whereas AS 1201 requires the auditor to review the work of an auditor-employed specialist to ''evaluate'' whether the work was performed and documented, the objectives of the procedures were achieved, and the results of the work support the conclusions reached.

The PCAOB's observations regarding existing audit practices in this area also reveal differences in the application of the auditing standards regarding the use of the work of auditor-employed and auditor-engaged specialists. For example, in circumstances when audit firms engage specialists, some firms perform the procedures specified in existing AS 1210, while other firms perform procedures that are similar to the procedures for supervising the work of auditor-employed specialists under AS 1201.

These factors indicate that investor protection can be enhanced by improving PCAOB standards for applying a risk-based supervisory approach to auditor-employed specialists, and extending those requirements to auditor-engaged specialists. This should promote a more uniform approach to the supervision of an auditor's specialists, whether employed or engaged, reflecting their similar roles. Specifically, investor protection can be enhanced by supplementing the existing supervision requirements under PCAOB standards with more specific direction on applying those principles when supervising the work of auditor-employed and auditor-engaged specialists. This includes, among other things, additional direction on reaching an understanding with auditor-employed and auditor-engaged specialists on the work to be performed and on reviewing and evaluating their work.

Comments on the Reasons for Standard Setting

Many commenters on the Proposal broadly expressed support for revisions to the Board's standards for using the work of specialists or stated that the Proposal would lead to improvements in audit quality. For example, some commenters agreed with statements in the Proposal that the increasing use of specialists, due in part to the increasing use of fair value measurements in financial reporting frameworks and increasing complexity of business transactions, warranted strengthening existing requirements. A number of commenters also indicated that the requirements for using specialists should be risk-based and more closely aligned with the Board's risk assessment standards than existing standards. One of these commenters stated that the Board should be proactive in addressing issues relating to auditors' use of the work of specialists through standard setting as an alternative to devoting additional resources to inspections and enforcement based on existing standards.

In addition, a number of commenters generally agreed with developing separate standards for using the work of a company's specialist, an auditor-employed specialist, and an auditor-engaged specialist. One commenter noted that separating these requirements could lead to better application in practice, especially among smaller CPA firms, while another commenter indicated that providing separate guidance for using the work of company specialists, auditor-employed specialists, and auditor-engaged specialists would be an improvement over existing standards. One commenter stated that inspections of audits involving the use of specialists had shown a need for improvement, and that the rationalization and enhancement of existing requirements would improve the efficiency and quality of audits.

A few commenters on the Proposal questioned the reasons for revisions to PCAOB auditing standards relating to the use of the work of specialists.[39] One commenter stated that the Proposal presented no clear evidence that audit deficiencies found by the PCAOB relating to the use of specialists resulted from deficiencies in the auditing standards. Another commenter stated that inspection findings did not necessarily warrant revisions to auditing standards and that it continued to question whether a fundamental change in audit standards was necessary. A third commenter stated that it did not believe that the case had been made for having separate standards for the use of auditor-employed and auditor-engaged specialists. Finally, a fourth commenter suggested that the Board should develop additional information on potential costs before proposing or adopting revisions to existing auditing standards, including through field testing of potential changes.[40]

The SAG has discussed specialist-related issues at a number of meetings.[41] Many SAG members expressed support for: (1) Greater auditor responsibility for evaluating the work performed by a company's specialists; (2) similar responsibilities when auditors use the work of auditor-employed specialists and auditor-engaged specialists; and (3) better communication between auditors and their specialists, whether employed or engaged. Some SAG members, however, questioned the need for changes to the existing standards, asserting that auditors may not always have the necessary level of expertise to evaluate the work of certain specialists and, as a result, may need to rely on the work of specialists.

In adopting the final amendments, the Board has taken into account the comments received on the Proposal, as well as its other outreach activities. The information available to the Board—including the current regulatory baseline, observations from the Board's oversight activities, and substantial outreach—suggests that investors would benefit from strengthened and clarified standards for auditors in this area. The Board notes that aspects of the required procedures in the final amendments are similar to current auditing practices by some larger and smaller audit firms. While the Board does not expect that the final amendments will eliminate inspection deficiencies observed in practice, the final amendments are intended to clarify the auditor's responsibilities and align the requirements for using the work of specialists more closely with the Board's risk assessment standards. The final amendments also reflect a number of changes that were made after the Board's consideration of comments

[39] Some commenters provided comments or expressed concerns about specific aspects of the proposed revisions to the Board's existing standards for using the work of specialists. The Board's consideration of these comments is discussed further below.

[40] *See* below for a more detailed discussion of the final amendments and clarifications of certain aspects of the proposed amendments, as set forth in the Proposal.

[41] *See* SAG meeting briefing papers and webcast archives (Nov. 29–30, 2017, Nov. 30–Dec. 1, 2016, Nov. 12–13, 2015, June 18, 2015, Oct. 14–15, 2009, and Feb. 9, 2006), available on the Board's website.

received on the Proposal about the potential impact of the proposed requirements on auditors, issuers, and specialists.[42]

Overview of Final Rules

The final amendments: (1) Add an appendix to AS 1105 with supplemental requirements for using the work of a company's specialist as audit evidence; (2) add an appendix to AS 1201 with supplemental requirements for supervising an auditor-employed specialist; and (3) replace existing AS 1210 with an updated standard for using the work of an auditor-engaged specialist. The key aspects of these amendments, which are intended to enhance the requirements in existing standards for using the work of a company's specialist, an auditor-employed specialist, and an auditor-engaged specialist, are discussed in this section. The ways in which the final amendments address the need for change from an economic perspective are discussed in section D.

The final amendments have been informed by the Board's outreach activities. They are aligned with the Board's risk assessment standards, so that the necessary audit effort is commensurate with, among other things, the significance of the specialist's work to the auditor's conclusion regarding the relevant assertion and the associated risk. Many commenters on the Proposal supported aligning any new standards on using the work of specialists with any new standards related to auditing accounting estimates, including fair value measurements. The final amendments are aligned with the Estimates Release.

Figure 3 summarizes the auditor's responsibilities and primary PCAOB standards for using the work of specialists applicable before and after the effective date of the final amendments.

Figure 3: Auditor Responsibilities and Primary Standards for Using the Work of Specialists

	Nature of Specialist's Involvement	*Before Effective Date of Final Amendments*	*After Effective Date of Final Amendments*
Company's Specialist	Specialist employed or engaged by the company	Auditor performs the procedures required by existing AS 1210	Auditor performs the procedures required by AS 1105 (including Appendix A), as amended
Auditor's Specialist	Auditor-engaged specialist		Auditor applies the supervisory procedures required by AS 1210, as amended
	Auditor-employed specialist	Auditor supervises the specialist under AS 1201	Auditor supervises the specialist under AS 1201 (including Appendix C), as amended

In brief, the final amendments make the following changes to PCAOB auditing standards:

- *Amend AS 1105.*
- Add a new Appendix A[43] that supplements the requirements in AS 1105 for circumstances when the auditor uses the work of the company's specialist as audit evidence, related to:
- Obtaining an understanding of the work and report(s), or equivalent communication, of the company's specialist(s) and related company processes and controls;[44]
- Obtaining an understanding of and assessing the knowledge, skill, and ability of a company's specialist and the entity that employs the specialist (if other than the company) and the relationship to the company of the specialist and the entity that employs the specialist (if other than the company); and
- Performing procedures to evaluate the work of a company's specialist, including evaluating: (i) The data, significant assumptions, and methods (which may include models) used by the specialist,[45] and (ii) the relevance and reliability of the specialist's work and its relationship to the relevant assertion;
- Align the requirements for using the work of a company's specialist with the risk assessment standards and the

[42] *See* below for a more detailed discussion of changes reflected in the final amendments and section D for a more detailed discussion of economic considerations related to the adoption of the final amendments.

[43] As proposed, these requirements would have been set forth as Appendix B to AS 1105.

[44] *See* AS 1105.A2, as adopted. Additionally, as amended, AS 2110, *Identifying and Assessing Risks of Material Misstatement,* sets forth requirements for understanding company processes and controls related to the use of specialists.

[45] This evaluation is not explicitly required under the Board's existing standards, other than under AS 2502 with respect to the significant assumptions of a company's specialist regarding fair value measurements and disclosures.

standard and related amendments adopted by the Board on auditing accounting estimates, including fair value measurements;[46] and

• Set forth factors for determining the necessary evidence to support the auditor's conclusion regarding a relevant assertion when using the work of a company's specialist.

• *Amend AS 1201.*

• Add a new Appendix C that supplements the requirements for applying the supervisory principles in AS 1201.05–.06 when using the work of an auditor-employed specialist to assist the auditor in obtaining or evaluating audit evidence, including requirements related to:

• Informing the auditor-employed specialist of the work to be performed;

• Coordinating the work of the auditor-employed specialists with the work of other engagement team members; and

• Reviewing and evaluating whether the work of the auditor-employed specialist provides sufficient appropriate evidence. Evaluating the work of the specialist includes evaluating whether the work is in accordance with the auditor's understanding with the specialist and whether the specialist's findings and conclusions are consistent with, among other things, the work performed by the specialist.

• Set forth factors for determining the necessary extent of supervision of the work of the auditor-employed specialist.

• *Replace existing AS 1210.*

• Replace with AS 1210, as amended, *Using the Work of an Auditor-Engaged Specialist,* which establishes requirements for using the work of an auditor-engaged specialist to assist the auditor in obtaining or evaluating audit evidence;

• Include requirements for reaching an understanding with an auditor-engaged specialist on the work to be performed and reviewing and evaluating the specialist's work that parallel the final amendments to AS 1201 for auditor-employed specialists;

• Set forth factors for determining the necessary extent of review of the work of the auditor-engaged specialist;

• Amend requirements related to assessing the knowledge, skill, ability, and objectivity[47] of the auditor-engaged specialist; and

• Describe objectivity, for purposes of the standard, as the auditor-engaged specialist's ability to exercise impartial judgment on all issues encompassed by the specialist's work related to the audit; and specify the auditor's obligations when the specialist or the entity that employs the specialist has a relationship with the company that affects the specialist's objectivity.

The Board has also adopted a single standard to replace its existing standards on auditing accounting estimates and fair value measurements and set forth a uniform, risk-based approach designed to strengthen and enhance the requirements for auditing accounting estimates.[48] Certain provisions of the final amendments in this notice include references to AS 2501, as adopted.

Most of those who commented on the proposed requirements regarding the use of the company's specialist expressed support for strengthening the requirements for evaluating the work of a company's specialist and aligning them with the Board's risk assessment standards. For example, one commenter stated that it agreed with statements in the Proposal that the proposed requirements may result in some auditors gaining a better understanding of a company's critical accounting estimates related to relevant financial statements and disclosures. Another commenter stated that the application of a risk-based approach to the testing and evaluation of the work of a company's specialist would reduce the risk of an auditor failing to sufficiently address the risks of material misstatement.

A few commenters disagreed with the approach, or aspects of the approach, for evaluating the work of a company's specialist as described in the Proposal. One commenter asserted that additional clarification for using the work of a company's specialist was needed to address practicability issues and avoid unnecessary costs. Another commenter suggested that the amendments should place greater weight on the professional requirements and certifications for certain company specialists.

The Board recognizes that the auditor does not have the same expertise as a person trained or qualified to engage in the practice of another profession. At the same time, establishing a uniform, risk-based approach for using the work of a company's specialist more clearly acknowledges the different roles of a company's specialist and an auditor's specialist and builds upon improvements observed in the practices of certain firms. The final amendments also clarify aspects of the proposed amendments, including the procedures for evaluating the work of a company's specialist, so that the required procedures are both practical and risk-based, and reasonably designed to lead to improvements in audit quality.[49]

Commenters on the proposed requirements for using an auditor's specialist generally agreed with a risk-based supervisory approach for both auditor-employed and auditor-engaged specialists. For example, one commenter agreed that this approach would promote an improved, more uniform approach to the supervision of an auditor's specialists. Consistent with the view of these commenters, the final amendments apply a risk-based supervisory approach to both auditor-employed and auditor-engaged specialists, which should enhance investor protection.

The subsections that follow discuss in more detail the final amendments. The subsections also include a comparison of the final requirements with the analogous requirements of the following standards issued by the IAASB and the Auditing Standards Board (''ASB'') of the American Institute of Certified Public Accountants:

IAASB Standards

• International Standard on Auditing 500, *Audit Evidence* (''ISA 500''); and

• International Standard on Auditing 620, *Using the Work of an Auditor's Expert* (''ISA 620'').

ASB Standards

• AU–C Section 500, *Audit Evidence* (''AU–C Section 500''); and

• AU–C Section 620, *Using the Work of an Auditor's Specialist* (''AU–C Section 620'').

The comparison included in these subsections may not represent the views of the IAASB or ASB regarding the interpretation of their standards. The information presented in the subsections does not cover the application and explanatory material in

[46] Certain provisions of the final amendments include references to a new auditing standard AS 2501, *Auditing Accounting Estimates, Including Fair Value Measurements* (''AS 2501, as adopted''), which has been adopted by the Board in a separate release. *See* Estimates Release, *supra* note 20.

[47] Under the final amendments, the term ''objectivity'' is reserved for the auditor-engaged specialist and not used to describe the relationship to the company of a company's specialist or an auditor-employed specialist. *See* below for further discussion of objectivity.

[48] As discussed in the Estimates Release, *supra* note 20, the Board is retitling and replacing existing AS 2501, *Auditing Accounting Estimates,* and superseding AS 2502 and AS 2503, *Auditing Derivative Instruments, Hedging Activities, and Investments in Securities.* AS 2501, as adopted, also includes a special topics appendix that addresses certain matters relevant to auditing the fair value of financial instruments, including the use of pricing information from third parties as audit evidence.

[49] *See* below for a more detailed discussion of the final amendments and clarifications regarding using the work of a company's specialist.

the IAASB standards or ASB standards.[50]

Scope of Final Amendments

The final amendments apply when an auditor uses the work of a ''specialist.'' Thus, the scope of the requirements hinges largely on the meaning of the term ''specialist.'' As described in the Proposal, the Board sought to carry forward the meaning of the term ''specialist'' from existing AS 1210, that is, a specialist is a person (or firm) possessing special skill or knowledge in a particular field other than accounting or auditing. The Board also sought to carry forward the concept from existing AS 1210 that income taxes and IT are specialized areas of accounting and auditing and thus are outside the scope of the final amendments.[51] As discussed below, the final amendments retain, as proposed, the meaning of the term ''specialist,'' including the concept regarding income taxes and IT.

Some commenters on the Proposal agreed with retaining the existing meaning of the term ''specialist.'' Other commenters suggested that the Board extend the scope of the Proposal to include persons with specialized skill or knowledge in certain areas of income taxes and IT (*e.g.,* unusual or complex tax matters, artificial intelligence, and blockchain). One of these commenters also asserted that income tax and IT professionals often support both audit and consulting practices and, as a practical matter, are treated as specialists by auditors. One commenter requested guidance for applying the proposed requirements when a legal specialist is involved, while another commenter suggested that the Board explain in the final amendments that an individual who specializes in complex taxation law would be a legal specialist.

One commenter suggested eliminating the distinction between expertise ''inside'' or ''outside'' the field of accounting and auditing with respect to an auditor's specialist because, in its view, determining when fields of expertise are outside of accounting and auditing is becoming more difficult. Another commenter stated that, in practice, it can be less than straightforward to differentiate between expertise in auditing and accounting and other areas. Other commenters, however, asserted that the Board should retain the concept in existing AS 1210 that an auditor is not expected to have the expertise of a person trained or qualified to engage in the practice of another profession or occupation.

As used today, the term ''specialist'' is generally understood by auditors, and observations from PCAOB oversight activities do not indicate that there is significant confusion over the meaning of the terms ''specialist'' and ''specialized area of accounting and auditing,'' as they have been used in the standards. After considering the comments received on the Proposal, however, the final amendments retain the meaning of the term ''specialist'' as proposed, with certain clarifications discussed below.

Specifically, the Board included a note to clarify when the final amendments apply to the work of an attorney used by the company.[52] As under existing AS 1210, specialists under the final amendments include attorneys engaged by a company as specialists, such as attorneys engaged by the company to interpret contractual terms or provide a legal opinion. The final amendments apply when an auditor uses the work of a company's attorney as audit evidence in other matters relating to legal expertise, such as when a legal interpretation of a contractual provision or a legal opinion regarding isolation of transferred financial assets is necessary to determine appropriate accounting or disclosure under the applicable financial reporting framework. The final amendments also clarify that the scope of these amendments does not apply to information provided by a company's attorney concerning litigation, claims, or assessments that is used by the auditor pursuant to AS 2505, *Inquiry of a Client's Lawyer Concerning Litigation, Claims, and Assessments*.

Consistent with existing AS 1210, income taxes and IT are outside the scope of the final amendments because they are specialized areas of accounting and auditing. For example, while specialized areas of income tax law involve legal specialists, accounting for income taxes remains an area of accounting and auditing. The Board added a footnote to Appendix A of AS 1105 that references AS 2505.08, as amended.[53] A note to AS 2505.08, as amended, clarifies the auditor's responsibility regarding the use of the written advice or opinion of a company's tax advisor or a company's tax legal counsel as audit evidence.[54] Also, to the extent that IT is used in information systems, auditors will still need to maintain sufficient technical knowledge to identify and assess risks and design procedures to respond to those risks and evaluate the audit evidence obtained. Accordingly, the Board does not believe that the need exists at this time to change the approach reflected in existing AS 1210 and designate particular areas of either income taxes or IT as outside the field of ''accounting and auditing.''

Comparison With Standards of Other Standard Setters

ISA 620 uses the terms ''auditor's expert'' and ''management's expert'' in a manner analogous to the term ''specialist'' in the final amendments. ISA 620, however, does not address whether IT is a specialized field outside of accounting and auditing. The term ''management's expert'' is also defined in ISA 500.

AU–C Section 620 and AU–C Section 500 use the word ''specialist'' instead of ''expert.''

Amendments Related to Using the Work of a Company's Specialist

The final amendments set forth requirements for using the work of a company's specialist as audit evidence. The amendments, which supplement the existing requirements of AS 1105, include:

- Obtaining an understanding of the work and report(s), or equivalent communication, of the company's specialist(s) and related company processes and controls;
- Obtaining an understanding of and assessing the knowledge, skill, and ability of the specialist and the entity that employs the specialist (if other than the company), and the relationship to the company of the specialist and the entity that employs the specialist (if other than the company); and
- Performing procedures to evaluate the work of a company's specialist, including evaluating: (1) The data, significant assumptions, and methods (which may include models) used by the specialist; and (2) the relevance and reliability of the specialist's work and its relationship to the relevant assertion.[55]

[50] Paragraph A59 of ISA 200, *Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with International Standards on Auditing,* indicates that the application and other explanatory material section of the ISAs ''does not in itself impose a requirement'' but ''is relevant to the proper application of the requirements of an ISA.'' Paragraph .A64 of AU–C Section 200, *Overall Objectives of the Independent Auditor and the Conduct of an Audit in Accordance with Generally Accepted Auditing Standards,* states that, although application and other explanatory material ''does not in itself impose a requirement, it is relevant to the proper application of the requirements of an AU–C section.''

[51] *See* footnote 1 of existing AS 1210.

[52] *See* second note to AS 1105.A1, as adopted.

[53] *See* footnote 1 to AS 1105.A1, as adopted.

[54] *See* note to AS 2505.08, as amended.

[55] Key principles from Auditing Interpretation AI 11, *Using the Work of a Specialist: Auditing Interpretations of AS 1210,* and Auditing

Commenters on the Proposal generally supported a risk-based approach for using the work of a company's specialist, as set forth in the proposed amendments. Many commenters also stated that there was a need to establish a separate standard for using the work of a company's specialist. However, a number of commenters questioned various aspects of the amendments, including the need for revisions to existing AS 1210 relating to the use of the work of a company's specialist. Additionally, some commenters requested clarifications or suggested changes to the proposed requirements. These and other comments are discussed below. A number of these comments resulted in revisions and clarifications to the final amendments.

Obtaining an Understanding of the Work of the Company's Specialist

See AS 1105.A2, as Adopted, and AS 2110.28A, as Adopted

The proposed amendments to AS 1105 provided that obtaining an understanding of the company's information system relevant to financial reporting would encompass obtaining an understanding of the work and report(s) of the company's specialist(s) and related company processes and controls.[56]

Some commenters supported the proposed requirement because, in their view, an understanding of the company's processes for using the work of company specialists is integral to the auditor's understanding of the information system relevant to financial reporting. Two commenters asserted that such controls are important for the auditor to consider when evaluating the work of a company's specialist and determining the necessary audit procedures. One commenter expressed concern that the proposed requirement was too broad and suggested that the auditor's understanding should instead be part of the evaluation of the specialist's objectivity. In addition, two commenters questioned whether the Board intended to require the auditor to evaluate the design of controls over the use of company specialists, even if the auditor was not performing an audit of internal control over financial reporting or planning to rely on controls for the related assertions. These commenters and others suggested that placing the proposed requirement for obtaining an understanding of the specialist's work in AS 2110 would better link the requirement to the auditor's risk assessment procedures, thereby reducing the likelihood that auditors would consider only the factors in proposed AS 1105.B2 and fail to consider other relevant factors set forth in AS 2110.

The Board considered these comments and is adopting the requirement substantially as proposed, but relocating the requirement to AS 2110 as suggested by certain commenters.[57] The procedure builds upon a requirement in existing AS 1210 that the auditor obtain an understanding of the nature of the work performed or to be performed by a specialist,[58] but is more closely aligned with the required risk assessment procedures in AS 2110. The required procedure is important because it informs the auditor's evaluation of the work of the company's specialist, and not merely the assessment of the specialist's objectivity.

Placing the requirement for obtaining an understanding of the specialist's work and report(s), or equivalent communication, in AS 2110, and framing the required procedure as a risk assessment procedure, provides better direction regarding the necessary audit effort for the procedure. The necessary audit effort for performing this procedure is governed primarily by the general requirements in AS 2110 for obtaining a sufficient understanding of the company's internal control over financial reporting.[59] This includes consideration of whether the auditor plans to use the specialist's work as audit evidence.

While the requirement, as adopted, likely will not represent a major change in practice, particularly for those firms whose practices already go beyond existing PCAOB standards, it should prompt auditors to appropriately consider the interaction of the specialist's work and the company's related processes and controls. For example, under the final amendments, the auditor should obtain an understanding of controls for using the work of specialists that are relevant to the audit, including evaluating the design of those controls and determining whether those controls have been implemented.[60]

Comparison With Standards of Other Standard Setters

The requirements in ISA 500 and AU–C 500 have some commonality with the requirements in the final amendments. Paragraph 8(b) of ISA 500 states that, if information to be used as audit evidence has been prepared using the work of a management's expert, the auditor shall, to the extent necessary and having regard to the significance of that expert's work for the auditor's purposes, obtain an understanding of the work of that expert.

AU–C Section 500 contains requirements that are similar to those in ISA 500.

Assessing the Knowledge, Skill, and Ability of the Company's Specialist and the Specialist's Relationship to the Company

See AS 1105.A3–.A5, as Adopted

The final amendments set forth requirements similar to existing AS 1210 for evaluating the knowledge, skill, and ability of the specialist and the relationship of the specialist to the company.[61]

Knowledge, Skill, and Ability

The Proposal set forth a requirement similar to that in existing AS 1210 for evaluating the professional qualifications of the specialist and generally provided the same factors for the auditor's assessment of the specialist's knowledge, skill, and ability.[62]

Interpretation AI 28, *Evidential Matter Relating to Income Tax Accruals: Auditing Interpretations,* related to the auditor's use of the work of a company's attorney and the use of written tax advice or opinions as audit evidence have been incorporated in AS 1105.A1, as adopted, and a note added to AS 2505.08, as amended.

[56] *See* proposed AS 1105.B2.

[57] Specifically, the requirements are located in AS 2110.28A, as adopted.

[58] *See* existing AS 1210.09.

[59] *See* AS 2110.18, which provides that the auditor should obtain a sufficient understanding of each component of internal control over financial reporting to: (1) Identify the types of potential misstatements, (2) assess the factors that affect the risks of material misstatement, and (3) design further audit procedures. *See also* AS 2110.19, which further provides that the nature, timing, and extent of procedures that are necessary to obtain an understanding of internal control depend on the size and complexity of the company; the auditor's existing knowledge of the company's internal control over financial reporting; the nature of the company's controls, including the company's use of IT; the nature and extent of changes in systems and operations; and the nature of the company's documentation of its internal control over financial reporting. In addition, AS 2110.20 provides that obtaining an understanding of internal control includes evaluating the design of controls that are relevant to the audit and determining whether the controls have been implemented.

[60] AS 2110.34 provides additional direction for determining controls relevant to the audit.

[61] Existing AS 1210.08 and AS 1210.10–.11 require the auditor to evaluate the professional qualifications of a specialist and the relationship of a specialist to the company.

[62] Existing AS 1210.08 provides that the auditor should consider certain information in evaluating the professional qualifications of the specialist to determine that the specialist possesses the necessary skill or knowledge in the particular field. The information to be considered in that evaluation is: (1) The professional certification, license, or other recognition of the competence of the

Continued

The Proposal differed from existing AS 1210, however, in certain respects. First, the Proposal extended the required understanding to expressly include the entity that employs the specialist, if the specialist is not employed by the company. Second, the Proposal expressly referred to the specialist's ''level'' of knowledge, skill, and ability. As with the auditor's assessment of competence under AS 2605, *Consideration of the Internal Audit Function,* this approach recognized that specialists may possess varying degrees of knowledge, skill, and ability. Third, the Proposal provided that the necessary evidence to assess the level of knowledge, skill, and ability of the company's specialist would depend on (1) the significance of the specialist's work to the auditor's conclusion regarding the relevant assertion and (2) the risk of material misstatement of the relevant assertion. Under this approach, the persuasiveness of the evidence the auditor would need to obtain increases as the significance of the specialist's work to the auditor's conclusion or the risk of material misstatement of the relevant assertion increases.[63]

The Board is adopting the requirement for evaluating the professional qualifications of the specialist as proposed. Most commenters on this aspect of the Proposal acknowledged the need for the auditor to obtain an understanding of and assess the knowledge, skill, and ability of a company's specialist. One commenter asserted that the proposed requirement was not well-suited to assessing the qualifications of the entity that employs the specialist. The Board considered this comment and notes that the final requirement retains the concept in existing AS 1210 that a specialist may be an individual or an entity. Accordingly, auditors should be familiar with assessing the qualifications of entities that are specialists or employ specialists. Furthermore, a strong reputation and standing of the specialist's employer in the specialized field can be a signal that the employer maintains qualified staff. On the other hand, an employer with a poor reputation or little expertise in the specialized field can indicate that more scrutiny of the qualifications of the individual specialist is warranted.

Some commenters asked for more direction on how to obtain an understanding of the professional qualifications of the company's specialist and the entity that employs the specialist (for example, by including in the rule text the discussion from the proposing release of potential sources of information about a specialist's qualifications). One of these commenters asserted that there are practical limits on obtaining evidence related to a company-engaged specialist's competence.

The Board considered these comments, but notes that the final requirement is similar to a requirement in existing AS 1210. Outreach to audit firms suggests that firms have policies and procedures for evaluating the qualifications of specialists, whether individuals or entities. Auditors should therefore be familiar with the process of assessing the knowledge, skill, and ability of entities that employ specialists.

As with existing AS 1210, the final amendments do not set forth specific steps to perform in assessing the specialist's knowledge, skill, and ability. It is not practicable to provide detailed direction in this area because of the variety of types of specialists that may be encountered. Examples of potential sources of information that, if available, could be relevant to the auditor's evaluation include:

- Information contained within the audit firm related to the professional qualifications and reputation of the specialist or the entity that employs the specialist (if other than the company) in the relevant field and experience with previous work of the specialist;
- Professional or industry associations and organizations, which may provide information regarding: (1) Qualification requirements, technical performance standards, and continuing professional education requirements that govern their members; (2) the specialist's education and experience, certification, and license to practice; and (3) recognition of, or disciplinary actions taken against, the specialist;
- Discussions with the specialist, through the company, about matters such as the specialist's understanding of the financial reporting framework, the specialist's experience in performing similar work, and the methods and assumptions used in the specialist's work the auditor plans to evaluate;
- Information obtained as part of audit planning, when obtaining an understanding of the company's processes and identifying controls for testing;
- Information included in the specialist's report about the specialist's professional qualifications (*e.g.,* a biography or resume);
- Responses to questionnaires provided to the specialist regarding the specialist's professional credentials; and
- Published books or papers written by the specialist.

Requirements applicable to a specialist pursuant to legislation or regulation also could help inform the auditor's assessment of the specialist's knowledge, skill, and ability.

Some of the examples listed above may provide more persuasive evidence than others.[64] For example, relevant information from a source not affiliated with the company or specialist, the auditor's experience with previous work of the specialist, or multiple sources generally would provide more persuasive evidence than evidence from the specialist's uncorroborated representations about his or her professional credentials. Additionally, the reliability (and thus persuasiveness) of information about the specialist's credentials and experience increases when the company has effective controls over that information, *e.g.,* in conjunction with controls over the selection of qualified specialists.

Some commenters asked for clarification as to how the company's controls and processes for using the work of a company's specialist should be considered when performing the assessment of knowledge, skill, and ability. As discussed earlier, the interaction of the specialist's work and the company's processes should be considered by the auditor in assessing and responding to risk in the related accounts and disclosures, especially when the specialist's work is significant to the auditor's conclusion regarding the relevant assertion and the accounts or disclosures have higher risk. Therefore, the company's controls and processes are considered in identifying and appropriately assessing the risks of material misstatement of the relevant assertion, which is one of the two factors that the auditor considers under AS 1105.A5, as adopted, in determining the necessary evidence for assessing the specialist's level of knowledge, skill, and ability.

specialist in his or her field, as appropriate; (2) the reputation and standing of the specialist in the views of peers and others familiar with the specialist's capability or performance; and (3) the specialist's experience in the type of work under consideration.

[63] Illustrative examples on the application of these factors when testing and evaluating the work of a company's specialist appear in the discussion on determining the necessary audit effort under AS 1105.A7, as provided below.

[64] As previously discussed, the risk of material misstatement of the relevant assertion and the significance of the specialist's work to the auditor's conclusion regarding the relevant assertion affect the persuasiveness of the evidence needed with respect to the knowledge, skill, and ability of the company's specialist.

Relationship to the Company

The Proposal provided that the auditor would assess the relationship to the company of the specialist and the entity that employs the specialist (if other than the company)—specifically, whether circumstances exist that give the company the ability to significantly affect the specialist's judgments about the work performed, conclusions, or findings (*e.g.,* through employment, financial, ownership, or other business relationships, contractual rights, family relationships, or otherwise). The proposed requirement was similar to existing AS 1210.10, but expanded the list of matters that the auditor should consider to include financial and business relationships with the company.

The Board is adopting this requirement substantially as proposed, with the addition of a note that sets forth examples of potential sources of information that could be relevant to the auditor's assessment.

Some commenters supported the proposed requirement for the auditor to assess the specialist's relationship to the company and stated that it was appropriate. Two commenters, however, asserted that there could be practical challenges to assessing the relationship to the company of the entity that employs the specialist (*e.g.,* if the entity that employs the specialist lacks systems to track such relationships or the auditor does not have access to those systems). The Board considered these comments, but notes that existing AS 1210 already requires an evaluation of the relationship of the specialist, whether an individual or an entity, to the client. Outreach to audit firms suggests that firms have policies and procedures for evaluating the objectivity of specialists, whether individuals or entities. Therefore, auditors should be familiar with assessing the qualifications of entities that are specialists or employ specialists.

Other commenters asked for additional direction regarding the necessary effort to obtain information regarding the specialist's relationship to the company. One commenter also emphasized the importance of considering ethical and performance requirements promulgated by a specialist's profession or by legislation or regulation governing the specialist. The final amendments do not prescribe specific steps to perform in assessing the specialist's relationship to the company, because additional specificity would make the requirements unnecessarily prescriptive. The Board has added a note to the final requirement, however, that includes non-exclusive examples of potential sources of information that could be relevant to the auditor's assessment of the relationship to the company of both the specialist and the specialist's employer (if other than the company).[65] These examples include disclosures by the specialist about relationships with the company in the specialist's report, or equivalent communication, pursuant to requirements promulgated by the specialist's profession or by legislation governing the specialist.[66] As with the auditor's assessment of a specialist's knowledge, skill, and ability, certain sources of information may provide more persuasive evidence than others. In situations where more persuasive evidence is required under these requirements, it may be appropriate to perform procedures to obtain evidence from multiple sources.

Some commenters also expressed a preference for retaining the term ''objectivity'' with respect to a company's specialist and further acknowledging that objectivity may exist along a spectrum. Similar to the Proposal, the final amendments reserve the term ''objectivity'' for specialists engaged by the auditor to assist in obtaining and evaluating audit evidence. The work of a company's specialist is different in nature from the work of an auditor's specialist, since a company's specialist performs work that the company frequently uses as source material for one or more financial statement accounts or disclosures, including accounting estimates. With respect to the existence of objectivity along a spectrum, the final amendments recognize that a company's ability to significantly affect a specialist's judgment may vary and, as discussed below, provide a spectrum for evaluating the company's ability to significantly affect the specialist's judgments.

As was proposed, the final amendments provide that, if the auditor identifies relationships between the company and the specialist (or the specialist's employer, if other than the company), the auditor has a responsibility to assess whether the company has the ability to significantly affect the specialist's judgments about the work performed, conclusions, or findings.[67] Examples of the types of circumstances that might give the company the ability to affect the specialist's judgments include, but are not limited to:

- The reporting relationship of a company-employed specialist within the company;
- Compensation of a company's specialist based, in part, on the outcome of the work performed;
- Relationships a company-engaged specialist has with entities acting as an agent of the company;
- Personal relationships, including family relationships, between the company's specialist and others within company management;
- Financial interests, including stock holdings, company specialists have in the company; and
- Ownership, business relationships, or other financial interests the employer of a company-engaged specialist has with respect to the company.

The auditor's assessment that the company has the ability to influence the specialist, however, does not preclude the auditor from using the work of a company's specialist, whether employed or engaged, as audit evidence. Rather, consistent with existing AS 1210, it is a factor in determining the necessary audit effort to evaluate that specialist's work.[68] In general, the necessary audit effort increases as the company's ability to affect the specialist's judgments increases.

Determining the Necessary Evidence

The Proposal differed from existing AS 1210 in that it set forth scalable requirements for determining the necessary evidence for evaluating both the knowledge, skill, and ability of the specialist and the relationship of the specialist to the company. The Board is adopting these requirements as proposed. Under the final amendments, the necessary evidence to assess the level of knowledge, skill, and ability of the company's specialist and the specialist's relationship to the company depends on (1) the significance of the specialist's work to the auditor's conclusion regarding the relevant assertion and (2) the risk of material misstatement of the relevant assertion. As the significance of the specialist's

[65] *See* note to AS 1105.A4, as adopted. These examples were based on examples set forth in the Proposal, but have been refined to better reflect their application in practice.

[66] While the Proposal had suggested that information regarding such requirements could be relevant to the auditor's evaluation of the specialist's relationships to the company, disclosures about relationships pursuant to such requirements are more relevant to the auditor's assessment than merely information about the legal or professional requirements.

[67] *See* AS 1105.A4, as adopted.

[68] *See* AS 1105.A7–.A10, as adopted. Examples that illustrate how relationships between the company and the company's specialist can affect the necessary audit effort in evaluating the work of a company's specialist under the final amendments appear in the discussion on determining the necessary evidence, as provided below.

work and risk of material misstatement increases, the persuasiveness of the evidence the auditor should obtain for those assessments also increases.[69]

No commenters opposed the proposed framework for determining the necessary evidence. A number of commenters, however, asked for clarification on the application of the requirement when performing the relevant evaluations. The Board's analysis of these comments is discussed above in connection with the required evaluations of the specialist's knowledge, skill, and ability, and the relationship of the specialist to the company.

Comparison With Standards of Other Standard Setters

Paragraph 8(a) of ISA 500 provides that, if information to be used as audit evidence has been prepared using the work of a management's expert, the auditor shall, to the extent necessary and having regard to the significance of that expert's work for the auditor's purposes, evaluate the competence, capabilities, and objectivity of that expert.

AU–C Section 500 contains requirements that are similar to those in ISA 500.

Evaluating the Work of the Company's Specialist

See AS 1105.A6–.A10, as Adopted

In general, a specialist's work involves using data, assumptions, and methods. The auditor's responsibilities under existing AS 1210 with respect to the data, assumptions, and methods used by the specialist are limited to (a) obtaining an understanding of the methods and assumptions used by the specialist and (b) making appropriate tests of data provided to the specialist.[70] In addition, the auditor should evaluate whether the specialist's findings support the related assertions in the financial statements.[71] Ordinarily, the auditor would use the work of the specialist unless the auditor's procedures lead the auditor to believe the findings are unreasonable in the circumstances.[72] If the auditor believes the specialist's findings are unreasonable, he or she is required to apply additional procedures, which may include potentially obtaining the opinion of another specialist.[73] Notably, before the final amendments, PCAOB standards have not expressly addressed how to determine the necessary audit effort to be applied in performing those procedures.

The Proposal sought to enhance the requirements for testing and evaluating the work of the company's specialist by:

- Extending the auditor's responsibilities for evaluating the specialist's assumptions to include all significant assumptions used by the specialist (not just those used in fair value measurements);
- Expanding the auditor's responsibilities with respect to data to include evaluating external data used by the specialist (not just data provided by the company to the specialist);
- Adding a requirement for the auditor to evaluate the appropriateness of the methods used by the specialist, including whether the data was appropriately applied;
- Setting forth a requirement for the auditor to comply with the Board's proposed estimates standard[74] when the auditor tests management's process for developing an estimate and a company's specialist was used; and
- Providing direction for determining the necessary audit effort for testing and evaluating the specialist's work, based on the risk of material misstatement and other factors set forth in the standard.

Commenters expressed mixed views on the premise underlying the Proposal that the auditor should test and evaluate the work of a company's specialist. While a number of commenters supported that premise, other commenters opposed expanding the auditor's responsibilities with respect to the specialist's methods and assumptions beyond existing AS 1210. Some of these commenters expressed concerns that the auditor may not be qualified to evaluate the work of a specialist and recommended retaining the more limited audit approach reflected in existing AS 1210, including the statement that ''the auditor is not expected to have the expertise of a person trained for or qualified to engage in practice of another profession or occupation.''

A number of commenters also addressed specific aspects of the proposed requirements for testing and evaluating the work of company specialists. Some commenters questioned the proposal's general use of the term ''test'' in describing the auditor's responsibilities, as well as the proposed requirement to also comply with the proposed estimates standard in circumstances where the auditor tests management's process for developing an estimate and a company's specialist was also used. Those commenters asserted that the expected audit effort was unclear. Two commenters stated that the proposed requirements in this area could be interpreted as requiring reperformance of the specialist's work, which one of these commenters asserted would be beyond the expertise of most auditors and thus require auditors to use an auditor's specialist.

In addition, some commenters requested clarification on the expectations for evaluating a specialist's models, especially in situations where auditors are unable to gain access to proprietary models used by company-engaged specialists. Some commenters also expressed concern about the proposed requirement to evaluate whether data was appropriately used by the specialist. Some of these commenters asserted that this requirement appeared to require auditors to reperform the specialist's work and suggested clarifying or eliminating that requirement. Additionally, some commenters suggested allowing auditors to rely on the issuer's controls over the use of specialists in determining the necessary procedures for evaluating the specialist's work.

A number of commenters acknowledged that the proposed requirements were intended to be scalable. However, some commenters questioned whether they would be scalable in practice. Other commenters asked for guidance on tailoring audit procedures based on risk and the other factors set forth in the Proposal, especially procedures under the proposed requirement to also comply with the proposed estimates standard. Also, some commenters asserted that the requirements did not adequately distinguish the audit effort based on whether the specialist was engaged or employed by the company.

After considering the comments on the Proposal, the Board is retaining the fundamental approach in the Proposal—under which the auditor evaluates the data, significant assumptions, and methods used by the specialist. This approach is intended to increase audit attention on the work of a company's specialist, particularly when that work is significant in areas of higher risk, to increase the likelihood that the auditor would detect material financial

[69] *See* AS 1105.A5, as adopted.

[70] For fair value measurements, however, another standard requires the auditor to evaluate the reasonableness of significant assumptions of the specialist. *See* footnote 2 of AS 2502. This standard is being superseded in the Estimates Release, *supra* note 20.

[71] *See* existing AS 1210.12.

[72] *Id.*

[73] *Id.*

[74] *See Proposed Auditing Standard—Auditing Accounting Estimates, Including Fair Value Measurements and Proposed Amendments to PCAOB Auditing Standards,* PCAOB Release No. 2017–002 (June 1, 2017).

statement misstatements related to that work.

Taking into account comments on specific aspects of the proposed requirements, however, the final amendments reflect a number of clarifying revisions to eliminate or revise certain proposed requirements that may have been perceived by commenters as unnecessarily complex or prescriptive. The revisions address concerns expressed by certain commenters, while preserving the intended benefits of the final amendments, and include:

- Removing the word ''test'' from the requirements to evaluate the work of the company's specialist, except in relation to company-produced data; and
- Reframing the requirements for evaluating the data, significant assumptions, and methods used by the specialist to describe the key considerations in making those evaluations.

In addition, the final amendments clarify the applicability of the requirements in circumstances when the company's specialist is involved in developing an accounting estimate, such as developing assumptions and methods used in an accounting estimate. In such circumstances, the requirements in Appendix A of AS 1105 apply to evaluating the data, significant assumptions,[75] and methods developed (or generated) by the specialist, or sourced by the specialist from outside the company, as well as to testing company-produced data. In contrast, for significant assumptions provided by management to the specialist, the auditor is required to look to the requirements in AS 2501, as adopted. The final amendments are discussed in more detail below.

Evaluating the Specialist's Work: Data, Significant Assumptions, and Methods

See AS 1105.A6 and .A8, as Adopted

The revisions reflected in the final amendments clarify the auditor's responsibilities for evaluating the work of a company's specialist, and are intended to avoid potential confusion that the auditor is required to reperform the work of the company's specialist. Among other things, the revised requirements reserve the use of the term ''test'' for procedures applied to company-produced information used by the specialist, consistent with its usage in AS 2501, as adopted.[76]

Notably, instead of requiring the auditor to comply with AS 2501, as adopted, the auditor would be required to apply a set of analogous procedures for evaluating data, significant assumptions, and methods that are tailored to situations in which specialists are used.[77] For example, under the final amendments, the auditor's responsibilities with respect to data, significant assumptions, and methods used by the specialist generally are:

- *Company-produced data:* Test the accuracy and completeness of company-produced data used by the specialist (*see* AS 1105.A8a, as adopted);[78]
- *Data from sources external to the company:* Evaluate the relevance and reliability of the data from sources external to the company that are used by the specialist (*see* AS 1105.A8a, as adopted);
- *Significant assumptions:* Evaluate whether the significant assumptions used by the specialist are reasonable:

(1) *Assumptions developed by the specialist:* Taking into account the consistency of those assumptions with relevant information (*see* AS 1105.A8b(1), as adopted);

(2) *Assumptions provided by company management and used by the specialist:* Looking to the requirements set forth in AS 2501.16–.18, as adopted (*see* AS 1105.A8b(2), as adopted);

(3) *Assumptions based on the company's intent and ability to carry out a particular course of action:* Looking to the requirements set forth in AS 2501.17, as adopted (*see* AS 1105.A8b(3), as adopted); and

- *Methods:* Evaluate whether the methods used by the specialist are appropriate under the circumstances, taking into account the requirements of the applicable financial reporting framework (*see* AS 1105.A8c, as adopted).

Under the final amendments, the focus of the auditor's evaluation of the work of the company's specialist does not require reperforming the specialist's work or evaluating whether the work complies with all technical aspects in the specialist's field. Instead, the auditor's responsibility is to evaluate whether the specialist's work provides sufficient appropriate evidence to support a conclusion regarding whether the corresponding accounts or disclosures in the financial statements are in conformity with the applicable financial reporting framework.

With respect to the specialist's methods, the auditor's responsibilities under PCAOB standards have historically been to understand the method used. The final amendments extend that obligation to encompass evaluating whether the method is appropriate under the circumstances, taking into account the requirements of the applicable financial reporting framework.[79] In many cases, evaluating a method's conformity with the applicable financial reporting requirements is the same as evaluating its appropriateness under the circumstances (*e.g.,* if the applicable accounting standard requires a particular method for determining the estimate). However, if the applicable financial reporting framework allows more than one method, or if the appropriate method under the framework depends on the circumstances, evaluating conformity with the framework involves consideration of other relevant factors, such as, the nature of the estimate and the auditor's understanding of the company and its environment.

A note to the final amendments also clarifies that evaluating the specialist's methods includes assessing whether the data and significant assumptions are appropriately applied under the applicable financial reporting framework.[80] Evaluating the application of the data encompasses, for example, whether the data is selected and adjusted in conformity with the requirements of the applicable financial reporting framework. Similarly, evaluating the application of significant assumptions encompasses evaluating whether the assumptions were selected in conformity with the requirements of the applicable financial reporting framework.

The final amendments do not require the auditor to obtain access to proprietary models used by the specialist. Rather, the auditor's responsibility is to obtain information to assess whether the model is in conformity with the applicable financial reporting framework. Depending on the model and the factors set forth in AS 1105.A7, as adopted, this might involve, for example, obtaining an understanding of the model, reviewing descriptions of

[75] A footnote to AS 1105.A8, as adopted, refers the auditor to AS 2501.15, as adopted, for the procedures to perform when identifying significant assumptions. For purposes of identifying significant assumptions, the company's assumptions include assumptions developed by the company's specialist.

[76] *See* Estimates Release, *supra* note 20.

[77] A note to AS 1105.A6, as adopted, emphasizes that paragraphs .16–.17 of AS 2101 describe the auditor's responsibilities for determining whether specialized knowledge or skill is needed. This includes determining whether an auditor's specialist is needed to evaluate the work of a company's specialist.

[78] *See also* AS 1105.10 for procedures when the auditor uses information produced by the company as audit evidence.

[79] *See* AS 1105.A8c, as adopted.

[80] *See* note to AS 1105.A8c, as adopted.

the model in the specialist's report or equivalent communication, testing controls over the company's evaluation of the specialist's work, or assessing the inputs to and output from the model (if necessary, using an alternative model for comparison).

With respect to the specialist's significant assumptions, auditors have historically had an obligation under PCAOB standards to understand the assumptions [81] and, for fair value measurements, to evaluate the reasonableness of the assumptions.[82] The final amendments extend the auditor's obligation to include evaluating the reasonableness of significant assumptions used by the specialist. This involves comparing the assumptions to relevant information. The note accompanying AS 1105.A8b(1), as adopted, provides examples of information that, if relevant, should be taken into account: (1) Assumptions generally accepted within the specialist's field; (2) supporting information provided by the specialist; (3) industry, regulatory, and other external factors, including economic conditions; (4) the company's objectives, strategies, and related business risks; (5) existing market information; (6) historical or recent experience, along with changes in conditions and events affecting the company; and (7) significant assumptions used in other estimates tested in the company's financial statements. These examples—including examples (1) and (2), which were suggested by commenters—point to information that generally would be available to the auditor (*e.g.,* through other procedures performed on the audit or the auditor's knowledge or the company and its industry).

Furthermore, the final amendments provide that, if a significant assumption is provided by company management and used by the specialist, the auditor should look to the requirements in AS 2501.16–.18, as adopted. The final amendments also provide that, if a significant assumption is based on the company's intent and ability to carry out a particular course of action, the auditor should look to the requirements set forth in AS 2501.17, as adopted. This applies regardless of whether the significant assumption was developed by the company or the company's specialist.

Determining the Necessary Audit Effort for Evaluating the Specialist's Work

See AS 1105.A7, as Adopted

Similar to the Proposal, the final amendments set forth four factors that affect the necessary evidence from the auditor's evaluation of the specialist's work to support a conclusion regarding a relevant assertion. Specifically, under the final amendments, the necessary evidence depends on the: (1) Significance of the specialist's work to the auditor's conclusion regarding the relevant assertion; (2) risk of material misstatement of the relevant assertion; (3) level of knowledge, skill, and ability of the specialist; [83] and (4) the ability of the company to significantly affect the specialist's judgments about the work performed, conclusions, or findings.

Some commenters asked for additional clarification or direction on how to apply the four factors to determine the necessary audit effort for evaluating the specialist's work. One commenter requested that the Board elaborate upon certain terms (*e.g.,* terms ''extensively'' and ''less extensive procedures'') that were used in two of the three examples that were included in the Proposal to illustrate how certain factors could affect the necessary audit effort in evaluating the work of a company's specialist. Another commenter requested that the Board provide additional examples of less complex scenarios.

In addition, some commenters asserted that the Proposal did not adequately account for differences between company-employed and company-engaged specialists. These commenters stated that the nature and extent of an auditor's procedures with respect to the work of a company-engaged specialist with the necessary knowledge, skill, and objectivity should not necessarily be the same as those for the work of a company-employed specialist. One commenter suggested expressly including in the list of factors performance standards that the specialist is required to follow.

The requirements regarding determining the necessary audit effort for evaluating the specialist's work were adopted substantially as proposed. The changes to the procedural requirements for evaluating the data, significant assumptions, and methods used by the specialist should help address concerns about the necessary level of effort under the appendix. Also, the three examples included in the Proposal have been revised to align with the final amendments and expanded to address factors that lead to more or less audit attention and illustrate how the additional attention may be directed under the circumstances.

With respect to the distinction between company-employed and company-engaged specialists, the Board believes that the final amendments provide an appropriate framework for distinguishing the work effort when using the work of such specialists. In particular, one of the four factors related to determining the necessary audit effort is the ability of the company to significantly affect the specialist's judgments about the work performed, conclusions, or findings. This factor is discussed in more detail above.

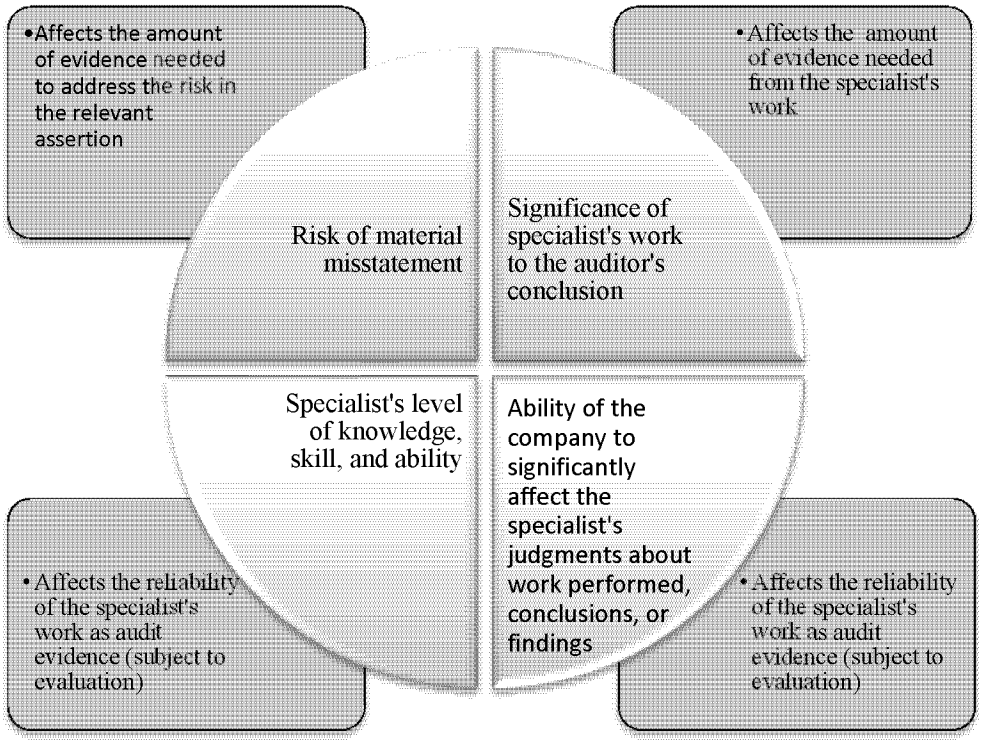
Specifically, under the four factors set forth in the final amendments, the auditor should obtain more persuasive evidence as the significance of the specialist's work, the risk of material misstatement, or the ability of the company to affect the specialist's judgments increases, or as the level of knowledge, skill, and ability possessed by the specialist decreases. In general, the required audit effort when evaluating the work of a company's specialist would be greatest when the risk of material misstatement is high; the specialist's work is critical to the auditor's conclusion; the specialist has a lower level of knowledge, skill, and ability in the particular field; and the company has the ability to significantly affect the specialist's judgments. These factors are also illustrated in Figure 4, below.

[81] *See* existing AS 1210.09.

[82] *See* footnote 2 of AS 2502.

[83] As noted previously, this factor includes consideration of professional requirements the specialist is required to follow.

Figure 4: Factors that Affect the Necessary Evidence From the Auditor's Evaluation of the Company's Specialist's Work



Under the final amendments, the first two factors, in combination, relate to the persuasiveness of the evidence needed from the work of the company's specialist, as follows:

• *Risk of Material Misstatement.* Consistent with the risk assessment standards, under the final amendments, the higher the risk of material misstatement for an assertion, the more persuasive the evidence needed to support a conclusion about that assertion.[84] Pursuant to existing PCAOB standards, tests of controls are required if the risk of material misstatement is based on reliance on controls.[85]

• *Significance of the Specialist's Work.* The significance of the specialist's work refers to the degree to which the auditor would use the work of the company's specialist to support the auditor's conclusions about the assertion. Generally, the greater the significance of the specialist's work to the auditor's conclusion regarding the relevant assertion, the more persuasive the evidence from the specialist's work needs to be. The significance of the specialist's work stems from:

• *The extent to which the specialist's work affects significant accounts and disclosures in the financial statements.* In some situations, the specialist's work might be used only as a secondary check for a significant account or disclosure, while in other situations that work might be a primary determinant in one or more significant accounts and disclosures in the financial statements.

• *The auditor's approach to testing the relevant assertion.* When a company's accounting estimate is determined principally based on the work of a company's specialist, an auditor testing the company's process for developing the accounting estimate would plan to use the work of the company's specialist for evidence regarding the estimate. On the other hand, if the auditor tests an assertion by developing an independent expectation, the auditor would give less consideration to the work of the company's specialist.[86]

The other two factors—the specialist's level of knowledge, skill, and ability, and the ability of the company to significantly affect the specialist's judgments—relate to the degree of reliability of the specialist's work as audit evidence (*i.e.,* the extent to which the specialist's work could provide persuasive evidence, if relevant and found to be satisfactory after the auditor's evaluation).

In some situations, if the auditor has doubt about the specialist's knowledge, skill, and ability or about the company's effect on the specialist's judgments, the auditor might choose not to use the work of the company's specialist, instead of performing additional procedures with respect to evaluating the specialist's work. The final amendments do not preclude the auditor from pursuing other alternatives to using that specialist's work. Such alternatives might include developing an independent expectation of the related accounting estimate or seeking to use the work of another specialist.

The following examples illustrate various ways in which the factors discussed above can affect the necessary audit effort in evaluating the work of a company's specialist under the final amendments. The examples assume that the auditor will evaluate, as appropriate, the data, significant assumptions, and

[84] *See* paragraph .09a of AS 2301.

[85] *See* AS 2301.16, which addresses testing controls to modify the nature, timing, and extent of planned substantive procedures.

[86] As another example, the auditor might develop an independent expectation using certain assumptions or methods of the company's specialist. In those instances, the auditor's evaluation would focus on those assumptions or methods that the auditor used in developing his or her independent expectation.

methods used by the specialist, and evaluate the relevance and reliability of the work of the company's specialist and its relationship to the relevant assertion.

Example 1—An oil and gas production company employs an experienced petroleum reserve engineer to assist in developing the estimated proved oil and gas reserves [87] that are used in multiple financial statement areas, including: (1) The company's impairment analysis; (2) depreciation, depletion and amortization calculations; and (3) related financial statement disclosures, such as reserve disclosures. A substantial portion of the engineer's compensation is based on company earnings, and the engineer has a reporting line to the company's chief financial officer. The auditor concludes that the risk of material misstatement of the valuation of oil and gas properties is high, and the reserve engineer's work is significant to the auditor's conclusion regarding the assertion. Thus, the auditor would need to obtain more persuasive audit evidence commensurate with a high risk of material misstatement, devoting more audit attention to the data, significant assumptions, and methods that are more important to the specialist's findings and more susceptible to error or significant management influence. On the other hand, relatively less audit evidence might be needed for the work of an individual reserve engineer if the company has several properties of similar risk, and the reserve studies are performed by different qualified reserve engineers who are either (1) engaged by the company, having no significant ties that give the company significant influence over the specialists' judgments or (2) employed specialists for which the company has implemented compensation policies, reporting lines, and other measures to prevent company management from having significant influence over the specialists' judgments.

Example 2—A financial services company specializes in residential mortgage and commercial mortgage loans, which are either sold or held in its portfolio. During the financial statement audit, the auditor may inspect appraisals prepared by the company's specialists for the real estate collateralizing loans for a variety of reasons, including in conjunction with testing the valuation of loans and the related allowance for loan losses. Under these circumstances, the persuasiveness of the evidence needed from (and the necessary degree of audit attention devoted to evaluating the methods, significant assumptions, and data used in) an individual appraisal would depend, among other things, on the importance of the individual appraisal to the auditor's conclusion about the related financial statement assertion. In general, more audit attention would be needed for appraisals used in testing the valuation of individually large loans that are valued principally based on their collateral than for appraisals inspected in loan file reviews for a portfolio of smaller loans with a low risk of default and a low loan-to-value ratio.

Example 3—A manufacturing company engages an actuary to calculate the projected pension benefit obligation (''PBO'') for its pension plan, which is used to determine the related accounts and disclosures in the financial statements. The auditor has assessed the risk of material misstatement for the valuation of the PBO as high and concluded that the actuary's work is significant to the auditor's conclusion. The actuary has extensive experience and is employed by a highly regarded actuarial firm with many clients. The actuary and actuarial firm have no relationships with the company other than performing the actuarial pension plan calculations for the company's financial statements. Under these circumstances, the necessary level of audit attention is less than it otherwise would be for a situation where a specialist has a lower level of knowledge, skill and ability, or the company has the ability to significantly affect the specialist's judgments about the work performed, conclusions, or findings. When more audit attention is needed, the auditor would focus on those aspects of the specialist's work that could be affected by the issues related to the specialist's knowledge, skill, and ability or by the company's ability to significantly affect the specialist's judgments.

The three examples above are provided only to illustrate the auditor's consideration of the four factors set forth in the final amendments when determining the necessary audit effort for evaluating the work of the company's specialist. Differences in circumstances, or additional information, could lead to different conclusions. The examples are not intended to prescribe the specific procedures to be performed in evaluating the work of a company's specialist in any particular situation, which should be determined in accordance with the final amendments.

Evaluating the Specialist's Work: Findings

See AS 1105.A9–.A10, as Adopted

The Proposal set forth requirements for evaluating the relevance and reliability of the specialist's findings. The proposed requirements built upon the existing requirements to evaluate the specialist's findings and were aligned with the risk assessment standards.[88] The Proposal also provided factors that affect the relevance and reliability of the specialist's work. Additionally, the proposed requirements described examples of situations in which additional procedures ordinarily are necessary. Commenters on this aspect of the Proposal generally supported the proposed approach. A few commenters asked for an explanation of the additional procedures to be performed. One commenter stated that certain restrictions, disclaimers, or limitations are common in specialists' reports and that auditors may have no choice but to accept them.

After considering the comments received, the Board is adopting the requirements as proposed with one modification discussed below. The final requirements in AS 1105.A10, as adopted, provide that the auditor should perform additional procedures, as necessary, if the specialist's findings or conclusions appear to contradict the relevant assertion or the specialist's work does not provide sufficient appropriate evidence. The final requirements also provide examples of situations in which additional procedures ordinarily are necessary, such as when the specialist's report, or equivalent communication,[89] contains restrictions, disclaimers, or limitations regarding the auditor's use of the report or the auditor has identified that the specialist has a conflict of interest relevant to the specialist's work. The final requirements do not prescribe specific procedures to be performed because the necessary procedures depend on the circumstances creating the need for the procedures.

A specialist's report may contain restrictions, disclaimers, or limitations that cast doubt on the relevance and reliability of the information contained in the specialist's report and affect how the auditor can use the report of the specialist. For example, a specialist's report that states ''the values in this report are not an indication of the fair value of the underlying assets'' generally would not provide sufficient appropriate evidence related to fair value measurements. On the other hand, a specialist's report that indicates that the specialist's calculations were based on information supplied by management may still be appropriate for use by the auditor to support the relevant assertion, since the auditor would already be required to test the company-supplied data used in the specialist's calculations.

[87] *See* Rule 4–10(a)(22) of Regulation S–X, 17 CFR 210.4–10(a)(22).

[88] Existing AS 1210.12 requires the auditor to evaluate whether the specialist's findings support the related assertions in the financial statements. It does not specify, however, what might lead an auditor to conclude that he or she should perform additional procedures or obtain the opinion of another specialist.

[89] AS 1105.A9–.A10, as adopted, added the phrase ''or equivalent communication,'' which was not part of the proposed amendments, because a company's specialist may communicate his or her findings or conclusions in a memorandum or other written alternative to a formal report. AS 1201, Appendix C, as adopted, and AS 1210, as amended, refer to a specialist's report ''or equivalent documentation.'' The difference in terminology is intended to distinguish information provided by the auditor's specialist from information provided by the company's specialist.

The requirements in AS 1105.A10, as adopted, do not require the auditor to perform procedures specifically to search for potential conflicts of interest that a company's specialist might have, other than those resulting from the specialist's relationship with the company. However, the auditor may become aware of conflicts of interest arising from relationships with parties outside the company (*e.g.,* through obtaining information about the specialist's professional reputation and standing, reading the specialist's report, or performing procedures in other audit areas). For example, in reviewing an appraisal of the collateral for a material loan receivable, the auditor may become aware that the appraiser has a substantial financial interest in the collateral. If the auditor becomes aware of a conflict of interest that could affect the specialist's judgments about the work performed, conclusions, or findings, the auditor would need to consider the effect of that conflict on the reliability of the specialist's work, and perform additional procedures if necessary to obtain sufficient appropriate evidence regarding the relevant financial statement assertion.

Comparison With Standards of Other Standard Setters

Paragraph 8(c) of ISA 500 provides that, if information to be used as audit evidence has been prepared using the work of a management's expert, the auditor shall, to the extent necessary and having regard to the significance of that expert's work for the auditor's purposes, evaluate the appropriateness of that expert's work as audit evidence for the relevant assertion.

AU–C Section 500 contains requirements that are similar to those in ISA 500.

Amendments Related to Supervising or Using the Work of an Auditor's Specialist

The final amendments set forth requirements for supervising or using the work of an auditor's specialist, taking into account differences in the auditor's relationship with employed specialists and engaged specialists. A new appendix to AS 1201 applies to the supervision of auditor-employed specialists, and AS 1210, as amended, applies when using the work of auditor-engaged specialists.

Commenters on the Proposal generally supported the proposed approach for overseeing and coordinating the work of an auditor's specialists, which was risk-based and set forth largely parallel requirements when using the work of both auditor-employed and auditor-engaged specialists. A few commenters, however, expressed concerns with the practicality and clarity of certain aspects of the proposed requirements. These comments and others are discussed below.

Amendments to AS 1201 for Supervising the Work of an Auditor-Employed Specialist

Appendix C of AS 1201, as adopted, supplements the existing requirements in AS 1201.05–.06 by providing more specific direction on applying the general supervisory principles in AS 1201 to the supervision of an auditor-employed specialist who assists the auditor in obtaining or evaluating audit evidence.

Meaning of ''Auditor-Employed Specialist''

See AS 1201.C1, as Adopted

The Proposal used the term ''auditor-employed specialist'' to mean a ''specialist employed by the auditor's firm,'' consistent with existing requirements.[90] Two commenters asked for clarification of how to apply the terms ''auditor-employed'' and ''auditor-engaged'' specialists when specialists are employed by entities that are affiliated with the audit firm and those specialists are subject to the same quality control policies and procedures and independence requirements as employees of the audit firm.

The final amendments retain the existing concept that an ''auditor-employed specialist'' is a ''specialist employed by the auditor's firm.'' Given that the terms ''auditor-employed specialist'' and ''auditor-engaged specialist'' in the final amendments are consistent with existing requirements, auditors should be familiar with this distinction. The Board recognizes, however, that there may be instances where an auditor uses the work of a specialist who is a partner, principal, shareholder or employee of an affiliated entity that is not an accounting firm and treats that specialist as if he or she were employed by the auditor's firm (*i.e.,* as an auditor-employed specialist). While it is not practicable to address all the legal structures or affiliations between accounting firms and specialist entities that may give rise to such situations, the final amendments are not intended to change current practice where the specialist is employed by an affiliated entity that adheres to the same quality control and independence requirements as the auditor's firm. In such circumstances, the Board understands that the auditor would assess the qualifications and independence of that specialist in the same ways as an engagement team member employed by the firm.

Comparison With Standards of Other Standard Setters

ISA 620 covers the auditor's use of the work of both auditor-employed experts and auditor-engaged experts, but the requirements in ISA 620 for the auditor's evaluation of the objectivity of an auditor-employed expert differ from those for evaluating the objectivity of an auditor-engaged expert.

AU–C Section 620 is similar to ISA 620 in both respects.

Determining the Extent of Supervision

See AS 1201.C2, as Adopted

The Proposal supplemented, in proposed Appendix C of AS 1201, the factors set forth in AS 1201.06 for determining the necessary extent of supervision of engagement team members in circumstances involving the use of the work of an auditor-employed specialist.[91]

No commenters opposed the proposed requirement for determining the extent of supervision. One commenter stated that the proposed requirement for determining the extent of supervision appeared scalable to the size and complexity of the audit engagement. The Board is adopting this requirement as proposed. The final requirements provide that the necessary extent of supervision depends on: (1) The significance of the specialist's work to the auditor's conclusion regarding the relevant assertion; (2) the risk of material misstatement of the relevant assertion; and (3) the knowledge, skill, and ability of the auditor-employed specialist relevant to the work to be performed by the specialist.

Comparison With Standards of Other Standard Setters

Paragraph 8 of ISA 620 provides that, depending on the circumstances, the nature, timing and extent of the auditor's procedures will vary with respect to: (1) Evaluating the

[90] *See* existing AS 1210.05, which states that AS 1201 applies to situations in which ''a specialist employed by the auditor's firm participates in the audit.''

[91] AS 1201.06 provides that, to determine the extent of supervision necessary for engagement team members, the engagement partner and other engagement team members performing supervisory activities should take into account, among other things: (1) The nature of the company, including its size and complexity; (2) the nature of the assigned work for each engagement team member; (3) the risks of material misstatement; and (4) the knowledge, skill, and ability of each engagement team member.

competence, capabilities and objectivity of the auditor's expert; (2) obtaining an understanding of the field of expertise of the auditor's expert; (3) reaching an agreement with the auditor's expert; and (4) evaluating the adequacy of the auditor's expert's work. In determining the nature, timing and extent of those procedures, the auditor shall consider matters including:

(a) The nature of the matter to which that expert's work relates;

(b) The risks of material misstatement in the matter to which that expert's work relates;

(c) The significance of that expert's work in the context of the audit;

(d) The auditor's knowledge of and experience with previous work performed by that expert; and

(e) Whether that expert is subject to the auditor's firm's quality control policies and procedures.

AU–C Section 620 contains requirements that are similar to those in ISA 620.

Qualifications and Independence of Auditor-Employed Specialists

See AS 1015.06, as amended, and footnote 3A to AS 2101.06b, as amended

PCAOB auditing standards require that personnel be assigned to engagement teams based on their knowledge, skill, and ability.[92] This requirement applies equally to auditor-employed specialists and other engagement team members. In addition, auditor-employed specialists must be independent of the company.[93] Accordingly, the requirements in PCAOB auditing standards for determining compliance with independence and ethics requirements apply to auditor-employed specialists.[94] Rather than add specific requirements for evaluating the qualifications and independence of auditor-employed specialists, the Proposal would have included two paragraphs in Appendix C citing the applicable requirements in existing standards.[95]

Most commenters on this topic advocated for greater acknowledgment of the auditor's ability to use information from the firm's system of quality control when assessing the knowledge, skill, ability, and independence of an auditor-employed specialist. Specifically, some of these commenters recommended the inclusion of references to QC 20, *System of Quality Control for a CPA Firm's Accounting and Auditing Practice* (''QC 20''), in these requirements. In the view of these commenters, QC 20 more fully encompasses both the considerations related to the appropriate assignment of personnel to an engagement and the requirements related to independence, integrity, and objectivity. One commenter suggested that the standard provide that a firm's system of quality control pursuant to QC 20 would be sufficient to satisfy the requirements relating to the qualifications and independence of auditor-employed specialists. Another commenter stated that the necessary guidance was contained in QC 20 and that the references in the Proposal to applicable requirements in existing standards were duplicative.

The Board considered these comments in adopting the final amendments. The intent of the proposed paragraphs for assigning personnel based on their knowledge, skill, and ability, and for determining compliance with independence and ethics requirements, was to emphasize that auditors' responsibilities for assessing the qualifications and independence of the auditor-employed specialists are the same as for other engagement team members. To avoid any misunderstanding that a different process was expected for assigning auditor-employed specialists and determining their compliance with independence and ethics requirements, the proposed paragraphs do not appear in the final amendments. Also, two related amendments to PCAOB auditing standards are being adopted. First, AS 1015.06 has been amended to clarify that engagement team members, which includes auditor-employed specialists, should be assigned to tasks and supervised commensurate with their level of knowledge, skill, and ability, and that this requirement is not limited to the assignment and supervision of auditors. Second, in another conforming amendment, a footnote was added to AS 2101.06b to remind auditors of the obligations of registered firms and their associated persons under PCAOB Rule 3520.

Under the final amendments, auditors will continue to have the ability to use information from, and processes in, the firm's quality control system when assessing the knowledge, skill, ability, and independence of auditor-employed specialists. The fact that a system of quality control may have a process for making assignments of specialists does not relieve the engagement partner (with the assistance of appropriate supervisory personnel on the engagement team) of his or her responsibility to determine whether the assigned specialist has the necessary qualifications and independence for the particular audit engagement in accordance with AS 1015.06, as amended, and AS 2101.06, as amended. The relevant facts and circumstances, including the nature, scope, and objectives of the specialist's work, should be considered when performing this assessment. For example, a valuation specialist may have expertise in valuing oil and gas reserves, but not in valuing coal reserves. In that case, failure to consider the specialist's expertise when assigning the specialist work on an audit engagement in an extractive industry could result in the inappropriate assignment of significant engagement responsibilities.

Comparison With Standards of Other Standard Setters

Paragraph 9 of ISA 620 provides that the auditor shall evaluate whether the auditor's expert has the necessary competence, capabilities, and objectivity for the auditor's purposes.

AU–C Section 620 contains requirements that are similar to those in ISA 620.

Informing the Specialist of the Work To Be Performed

See AS 1201.C3–.C5, as adopted

The Proposal supplemented the requirements in PCAOB standards for informing the engagement team members of their responsibilities to address situations where auditor-employed specialists are performing work in an audit.[96] Most commenters

[92] *See* AS 2301.05a and AS 1015.06, as amended.

[93] PCAOB Rule 3520, *Auditor Independence,* requires a registered public accounting firm and its associated persons to be independent of the firm's ''audit client'' throughout the audit and professional engagement period, meaning that they must satisfy all independence criteria applicable to an engagement. In addition, under Rule 2–01 of Regulation S–X, 17 CFR 210.2–01, any professional employee of the ''accounting firm'' (as broadly defined in Rule 2–01(f)(2) to include associated entities) who participates in an engagement of an audit client is a member of the ''audit engagement team,'' as that term is defined under Rule 2–01(f)(7)(i). The effect is that an accounting firm is not independent if it uses the work of a specialist employed by the accounting firm who does not meet the independence requirements of Rule 2–01.

[94] *See* AS 2101.06b.

[95] *See* proposed AS 1201.C3–.C4; *see also* AS 2301.05a, AS 1015.06, and AS 2101.06b.

[96] AS 1201.05a sets forth requirements for the engagement partner and, as applicable, other engagement team members performing supervisory activities to inform engagement team members of their responsibilities. These matters include: (1) The objectives of the procedures that engagement team members are to perform; (2) the nature, timing, and extent of procedures they are to perform; and (3) matters that could affect the procedures to be performed or the evaluation of the results of those procedures, including relevant aspects of the

who commented on the supplemental requirements generally supported the proposed approach, asserting that it would foster effective communication between the auditor and the auditor's specialist. Some commenters, however, asked for clarification of certain aspects of the proposed requirement to establish and document an understanding with the specialist of the work to be performed. After considering the comments received, the Board is adopting the requirements substantially as proposed.

The final amendments include requirements for the engagement partner and, as applicable, other engagement team members performing supervisory activities to inform the auditor-employed specialist about the work to be performed. These requirements include establishing and documenting an understanding with the specialist regarding the responsibilities of the specialist, the nature of the specialist's work, the specialist's degree of responsibility for testing data and evaluating methods and significant assumptions, and the responsibility of the specialist to provide a report, or equivalent documentation.

Some commenters requested clarification in the final amendments on the form of documentation of the auditor's understanding with the specialist. In addition, some commenters suggested removing the specific reference to the specialist's responsibility to provide a ''report, or equivalent documentation'' and allowing for more flexibility when the specialist's results are communicated to the auditor. Some of these commenters asserted that the proposed requirement connoted the preparation of a formal, signed report, which could discourage effective two-way communication between the auditor and the specialist. Another commenter suggested that the Board consider whether the auditor's understanding with the specialist should also include matters the specialist should communicate to the auditor, and the nature, timing, and extent of those communications. One commenter also expressed concern that use of the term ''degree of responsibility'' could be seen as a means for auditors to abdicate responsibility for audit work to specialists.

The final amendments do not include specific requirements for how to document the auditor's understanding with the auditor's specialist. Instead, the Board contemplates that the understanding with the specialist can be documented in a variety of ways, such as in planning memoranda, separate memoranda, or other related work papers. This approach should provide auditors with flexibility, while still requiring the documentation of the important aspects of the understanding reached by the auditor and the auditor's specialist. This approach also enables the specialist to communicate those matters specific to the work performed and does not limit the specialist's ability to communicate other items to the auditor.

The final amendments also require the auditor to establish and document an understanding with the specialist regarding the degree of responsibility of the specialist for: (1) Testing data produced by the company, or evaluating the relevance and reliability of data from sources external to the company; (2) evaluating the significant assumptions used by the company or the company's specialist, or developing his or her own assumptions; and (3) evaluating the methods used by the company or the company's specialist, or using his or her own methods. The intent of this requirement is to enhance coordination of the work between the auditor and the auditor's specialist and facilitate supervision of the specialist by the engagement partner and others with supervisory responsibilities. For example, if the auditor's specialist assists the auditor in developing an independent expectation using data, assumptions, or a model provided by the auditor or auditor's specialist, the auditor would establish an understanding with the specialist regarding the specialist's responsibilities with respect to the data, assumptions, or model.[97] Regardless of the specialist's degree of responsibility, the engagement partner and, as applicable, other engagement team members performing supervisory activities are responsible for evaluating the specialist's work and report, or equivalent documentation.[98]

In addition, as proposed, the final amendments require establishing and documenting the specialist's responsibility to provide ''a report, or equivalent documentation'' to the auditor. This requirement should provide flexibility for auditors to obtain the necessary information about the specialist's procedures, findings, and conclusions through the specialist's report, other specialist-provided documentation, or a combination of the two. The requirement should also facilitate the auditor's compliance with other PCAOB auditing standards, such as those on engagement quality review and audit documentation.[99]

The final amendments require establishing and documenting the auditor's understanding with the specialist regarding the ''nature of the work that the specialist is to perform or assist in performing.'' As proposed, this requirement would have also encompassed the ''specialist's approach to that work.'' Two commenters suggested that the Board clarify the difference between the two terms. The nature of the specialist's work would include, for example, testing data and evaluating the methods and significant assumptions used in developing an estimate when testing the company's process used to develop an accounting estimate or developing an independent expectation of an estimate. The specialist's approach to that work, in turn, might include the procedures the specialist performs to test management's process or develop an independent expectation, such as testing data and evaluating the methods and significant assumptions used in developing an estimate. Since the auditor's obligation to establish and document the specialist's degree of responsibility for performing similar procedures is addressed in other provisions of the final amendments,[100] the phrase ''the specialist's approach to that work'' has been omitted to avoid potential confusion.

As proposed, the final amendments also provide that, pursuant to AS 1201.05a(3), the engagement partner and, as applicable, other engagement team members performing supervisory activities should inform the auditor-employed specialist about matters that could affect the specialist's work.[101] This includes, as applicable, information about the company and its environment, the company's processes for developing the related accounting estimate, the company's use of specialists in developing the estimate, relevant requirements of the applicable financial reporting framework, possible accounting and auditing issues, and the need to apply professional skepticism. Commenters did not offer suggestions

company, its environment, and its internal control over financial reporting, and possible accounting and auditing issues.

[97] AS 1201.C5, as adopted, provides that the auditor should comply with AS 2501.21–.26, as adopted, when an independent expectation is developed. For example, the auditor's responsibilities with respect to using data or assumptions obtained from a third party are presented in AS 2501.23, as adopted. *See* Estimates Release, *supra* note 20.

[98] *See* AS 1201.C6–.C7, as adopted.

[99] *See* AS 1220, *Engagement Quality Review,* and AS 1215, *Audit Documentation.*

[100] *See* AS 1201.C3c, as adopted.

[101] *See* AS 1201.C4, as adopted.

on this provision, although one commenter stated that it concurred with the proposed requirement.

The final amendments also provide that the engagement partner and, as applicable, other engagement team members performing supervisory activities should implement measures to determine that there is a proper coordination of the work of the specialist with the work of other relevant engagement team members to achieve a proper evaluation of the evidence obtained in reaching a conclusion about the relevant assertion.[102] One commenter requested clarification of the term ''measures,'' as used in this context. The final requirement emphasizes that the auditor is responsible for complying with relevant auditing standards, including, when applicable, AS 2501, as adopted, and Appendix A of AS 1105, as adopted.[103] This requirement is intended to prompt the auditor to coordinate with the specialist to make sure that the work is performed in accordance with the applicable standards, including the requirement to consider relevant audit evidence, regardless of whether it supports or contradicts the relevant financial statement assertion. For example, in auditing an accounting estimate under AS 2501, as adopted, measures taken by the auditor could include either performing, or supervising the auditor's specialist in performing, the required procedures with respect to testing and evaluating the data, and evaluating the methods and significant assumptions used in developing that estimate.[104]

Comparison With Standards of Other Standard Setters

Paragraph 11 of ISA 620 provides that the auditor shall agree, in writing when appropriate, on the following matters with the auditor's expert:

(a) The nature, scope and objectives of that expert's work;

(b) The respective roles and responsibilities of the auditor and that expert;

(c) The nature, timing, and extent of communication between the auditor and that expert, including the form of any report to be provided by that expert; and

(d) The need for the auditor's expert to observe confidentiality requirements.

AU–C Section 620 contains requirements that are similar to those in ISA 620.

Evaluating the Work of the Specialist

See AS 1201.C6–.C7, as Adopted

The Proposal supplemented, in Appendix C, the requirements in AS 1201.05c for reviewing the work of the engagement team in circumstances in which auditor-employed specialists are used.[105] It provided that, if the specialist's findings or conclusions appear to contradict the relevant assertion or the specialist's work does not provide sufficient appropriate evidence, the engagement partner and, as applicable, other engagement team members performing supervisory activities should perform additional procedures, or request the specialist to perform additional procedures, as necessary to address the issue.

Commenters generally agreed with these requirements, noting that the requirements are appropriate and, in the view of some commenters, would improve audit quality. Two commenters asked for additional guidance on how the auditor should evaluate methods and assumptions used by an auditor-employed specialist. One commenter recommended providing additional guidance on the specific procedures to be performed by auditors to evaluate a specialist's work. After considering the comments, the Board is adopting the requirements substantially as proposed.

The final amendments provide a principles-based framework for reviewing and evaluating the work of the specialist. Under the final amendments, the engagement partner and, as applicable, other engagement team members performing supervisory activities should review the specialist's report or equivalent documentation describing the work performed, the results of the work, and the findings or conclusions reached by the specialist, as provided for under AS 1201.C3d, as adopted.[106]

This approach links the scope of the auditor's review to the report or equivalent documentation that the specialist agreed to furnish to the auditor under AS 1201.C3, as adopted. The principles for the necessary extent of supervision, discussed earlier, also apply to evaluating the work of the auditor-employed specialist, including the report or equivalent documentation provided by the specialist. Accordingly, auditors should be familiar with this approach and how to apply this requirement in practice.

The necessary extent of review and evaluation of the auditor-employed specialist's work depends on (1) the significance of the specialist's work to the auditor's conclusion regarding the relevant assertion; (2) the risk of material misstatement of the relevant assertion; and (3) the knowledge, skill, and ability of the specialist. In performing the review, the auditor also should evaluate whether the specialist's work provides sufficient appropriate evidence, specifically whether:

- The specialist's work and report, or equivalent documentation, are in accordance with the auditor's understanding with the specialist; and
- The specialist's findings and conclusions are consistent with results of the work performed by the specialist, other evidence obtained by the auditor, and the auditor's understanding of the company and its environment.

AS 1201.C7, as adopted, provides that, if the specialist's findings or conclusions appear to contradict the relevant assertion or the specialist's work does not provide sufficient appropriate evidence, the engagement partner and, as applicable, other engagement team members performing supervisory activities should perform additional procedures, or request the specialist to perform additional procedures, as necessary to address the issue. The final requirement also provides examples of situations in which additional procedures ordinarily would be necessary, including:

- The specialist's work was not performed in accordance with the auditor's instructions;
- The specialist's report, or equivalent documentation, contains restrictions, disclaimers, or limitations that affect the auditor's use of the report or work;[107]
- The specialist's findings and conclusions are inconsistent with (1) the results of the work performed by the specialist, (2) other evidence obtained

[102] *See* AS 1201.C5, as adopted.

[103] *See* AS 1201.C5, as adopted. In response to comments, this paragraph was revised in the final amendments to provide that, if an auditor's specialist is used to evaluate the work of a company's specialist, measures should be implemented to comply with Appendix A of AS 1105, as adopted, and, for accounting estimates, AS 2501.19, as adopted.

[104] *See* AS 2501, as adopted, and Estimates Release, *supra* note 20.

[105] AS 1201.05c provides that the engagement partner and, as applicable, other engagement team members performing supervisory activities should review the work of engagement team members to evaluate whether: (1) The work was performed and documented; (2) the objectives of the procedures were achieved; and (3) the results of the work support the conclusions reached.

[106] *See* AS 1201.C6, as adopted.

[107] The auditor's consideration of restrictions, disclaimers, or limitations in a report, or equivalent documentation, provided by an auditor-employed specialist is the same as when such language is contained in a report, or equivalent documentation, provided by an auditor-engaged specialist. *See* below for further discussion of the auditor's consideration of the effect of restrictions, disclaimers, or limitations on the report, or equivalent documentation, provided by the auditor-engaged specialist.

by the auditor, or (3) the auditor's understanding of the company and its environment;

- The specialist lacks a reasonable basis for data or significant assumptions the specialist used; or
- The methods used by the specialist were not appropriate.

These requirements are consistent with existing provisions in paragraphs .06 and .36 of AS 2810, *Evaluating Audit Results,* which provide that, if the auditor concludes that the evidence gathered is not adequate, he or she should modify his or her audit procedures or perform additional procedures as necessary (*e.g.,* audit procedures may need to be modified or additional procedures may need to be performed as a result of any changes in the risk assessments). Similarly, if the evidence gathered by the specialist in testing or evaluating data, or evaluating significant assumptions is not adequate, the engagement partner and, as applicable, other engagement team members performing supervisory activities should perform additional procedures, or request the specialist to perform additional procedures, as necessary to address the issue.

One commenter asserted that auditors may not have sufficient knowledge of the specialist's field of expertise to evaluate a specialist's work and effectively challenge methods, assumptions, and data, particularly in relation to highly complex technical areas. The final amendments recognize that the engagement partner and, as applicable, other engagement team members performing supervisory responsibilities may not have in-depth knowledge of the specialist's field. However, under existing PCAOB standards, the auditor is required to have sufficient knowledge of the subject matter to evaluate a specialist's work as it relates to the nature, timing, and extent of the auditor's work and the effects on the auditor's report.[108] Furthermore, the evaluation of the specialist's work under the final amendments is based on matters that are within the capabilities of the auditor (*e.g.,* whether the specialist followed instructions and whether the results of the work support the specialist's conclusions).

Another commenter asked for clarification of the term ''reasonable basis'' in the context of assessing whether the specialist lacks a reasonable basis for data or significant assumptions the specialist used. In that context, ''reasonable basis'' refers to whether the specialist's selection of data or significant assumptions was determined arbitrarily or instead based on consideration of relevant information available to the specialist.

Comparison With Standards of Other Standard Setters

Paragraph 12 of ISA 620 provides that the auditor shall evaluate the adequacy of the auditor's expert's work for the auditor's purposes, including:

(a) The relevance and reasonableness of that expert's findings or conclusions, and their consistency with other audit evidence;

(b) If that expert's work involves use of significant assumptions and methods, the relevance and reasonableness of those assumptions and methods in the circumstances; and

(c) If that expert's work involves the use of source data that is significant to that expert's work, the relevance, completeness, and accuracy of that source data.

Paragraph 13 of ISA 620 provides that if the auditor determines that the work of the auditor's expert is not adequate for the auditor's purposes, the auditor shall:

(a) Agree with that expert on the nature and extent of further work to be performed by that expert; or

(b) Perform additional audit procedures appropriate to the circumstances.

AU–C Section 620 contains requirements that are similar to those in ISA 620.

Amendments to Existing AS 1210 for Using the Work of an Auditor-Engaged Specialist

This section discusses the final requirements in AS 1210, as amended, for audits in which the auditor uses an auditor-engaged specialist. In such circumstances, the objective of the auditor is to determine whether the work of the auditor-engaged specialist is suitable for the auditor's purposes and supports the auditor's conclusion regarding the relevant assertion.

Assessing the Knowledge, Skill, Ability, and Objectivity of the Engaged Specialist

As described above, existing AS 1210 requires the auditor to evaluate the professional qualifications of a specialist and the relationship of a specialist to the company.

Similar to the final amendments related to using a company's specialist, the final amendments carry forward the existing requirements with certain modifications described below.

Knowledge, Skill, and Ability

See AS 1210.03–.04, as Amended

Requirements in existing AS 1210 related to the auditor's evaluation of a specialist's qualifications were described above with regard to a company's specialist. These requirements are the same for a company's specialist and an auditor-engaged specialist.

The Proposal substantially carried forward the requirement in existing AS 1210. Unlike the existing standard, however, the Proposal expressly provided that the auditor would obtain an understanding of the professional qualifications of both the specialist and the entity that employs the specialist. The Board is adopting this requirement as proposed.

Two commenters concurred with the proposed approach to assessing knowledge, skill, and ability of the auditor-engaged specialist. One commenter suggested allowing auditors to assess the specialist's knowledge, skill, and ability centrally as part of the firm's system of quality control. Another commenter asserted that the proposed requirement was not well-suited to assessing the knowledge, skill, and ability of the entity that employs the specialist.

Under the final amendments, auditors will continue to be able to use information from, and processes in, the firm's quality control system when assessing the knowledge, skill, and ability of auditor-engaged specialists. The fact that a system of quality control may have a firm-level process for screening engaged specialists does not relieve the engagement partner (with the assistance of appropriate supervisory personnel on the engagement team) of his or her responsibility to assess whether the engaged specialist has the necessary knowledge, skill, and ability for the particular audit engagement. The relevant facts and circumstances, including the nature, scope, and objectives of the specialist's work, should be considered when performing this assessment.

The final requirement retains the concept in existing AS 1210 that a specialist may be an individual or an entity. Outreach to audit firms suggests that firms have policies and procedures for evaluating the qualifications of specialists, whether individuals or entities. Accordingly, auditors should be familiar with assessing the qualifications of entities that are specialists or employ specialists. Therefore, the final requirement is not expected to result in a significant change in practice.

[108] *See* AS 2101.17.

AS 1210, as amended, does not specify steps to perform or information sources to use in assessing the specialist's knowledge, skill, and ability. Potential sources of relevant information, if available, could include the following:

- Information contained within the audit firm related to the professional qualifications and reputation of the specialist and the entity that employs the specialist, if applicable, in the relevant field and experience with previous work of the specialist;
- Professional or industry associations and organizations, which may provide information on: (1) Qualification requirements, technical performance standards, and continuing professional education requirements that govern their members; (2) the specialist's education and experience, certification, and license to practice; and (3) recognition of, or disciplinary actions taken against the specialist;
- Information provided by the specialist about matters regarding the specialist's understanding of the financial reporting framework, experience in performing similar work, and the methods and assumptions used in the specialist's work the auditor plans to evaluate;
- The specialist's responses to questionnaires about the specialist's professional credentials; and
- Published books or papers written by the specialist.

Requirements applicable to a specialist pursuant to legislation or regulation also could help inform the auditor's assessment of the specialist's knowledge, skill, and ability.

The purpose of the assessment of the auditor-engaged specialist's knowledge, skill, and ability is two-fold: (1) To determine whether the specialist possesses a sufficient level of knowledge, skill, and ability to perform his or her assigned work; and (2) to help determine the necessary extent of the review and evaluation of the specialist's work. AS 1210.04, as amended, emphasizes the importance of engaging a sufficiently qualified auditor's specialist by expressly providing that the auditor should not use the work of an engaged specialist who does not have a sufficient level of knowledge, skill, and ability.

The assessment of the specialist's knowledge, skill, and ability by the engagement partner and, as applicable, other engagement team members performing supervisory activities is also a factor when determining the necessary extent of the review and evaluation of the specialist's work.[109] The auditor's evaluation of the work of a specialist may be more extensive if the specialist generally has sufficient knowledge, skill, and ability in the relevant field of expertise, but less experience in the particular area of specialty within the field. For example, a valuation specialist may possess sufficient knowledge, skill, and ability in business valuation, but may not be well-versed in the application of business valuation for financial reporting purposes.

Objectivity

See AS 1210.05 and .11, as Amended

Requirements in existing AS 1210 related to the auditor's evaluation of a specialist's objectivity are described above with regard to a company's specialist. Those requirements are the same for a company's specialist and an auditor-engaged specialist.

The Proposal built on the requirements for assessing objectivity in the existing standard and provided that the engagement partner and, as applicable, other engagement team members performing supervisory activities would assess whether the specialist and the entity that employs the specialist have the necessary objectivity, which includes evaluating whether the specialist or the entity that employs the specialist has a relationship to the company (*e.g.,* through employment, financial, ownership, or other business relationships, contractual rights, family relationships, or otherwise), or any other conflicts of interest relevant to the work to be performed.

The proposed requirements differed from the existing requirements in two primary respects. First, they articulated the concept of objectivity for purposes of proposed AS 1210, as referring to the specialist's ability ''to exercise impartial judgment on all issues encompassed by the specialist's work related to the audit.'' Second, they expanded the list of matters that the auditor would consider in assessing objectivity to include financial and business relationships with the company and other conflicts of interest.

Some commenters supported the proposed approach. Other commenters expressed concern that the proposed requirement implied that the assessment of whether the specialist had the necessary objectivity was a binary decision. These commenters expressed a preference for describing objectivity as an attribute that exists along a spectrum. Some of these commenters asserted that an auditor should not be precluded from using the work of a less objective specialist, as long as the auditor performed additional procedures in those circumstances.

After considering the comments received, the requirement has been revised to allow auditors to assess the specialist's level of objectivity along a spectrum and use the work of a less objective specialist if the auditor performs additional procedures to evaluate the specialist's work. In revising this requirement, the Board took into account the need for auditors to assess the objectivity of auditor-engaged specialists, while allowing auditors, where appropriate, to engage specialists who have certain relationships with a company that may raise questions as to their level of objectivity.

The final amendments also require the auditor to perform procedures that are commensurate with, among other things, an engaged specialist's degree of objectivity.[110] Under the final amendments, if the specialist or the entity that employs the specialist has a relationship with the company that affects the specialist's objectivity, the auditor should (1) perform additional procedures to evaluate the data, significant assumptions, and methods that the specialist is responsible for testing, evaluating, or developing consistent with the understanding established with the specialist pursuant to AS 1210.06, as amended, or (2) engage another specialist. The necessary nature and extent of the additional procedures would depend on the degree of objectivity of the specialist. As the degree of objectivity increases, the evidence needed from additional procedures decreases.[111] If the specialist has a low degree of objectivity,[112] the auditor should apply the procedures for evaluating the work of a company's specialist.[113] For example, if the specialist's employer has a significant ownership interest in the company, the specialist's ability to exercise objective and impartial judgment might be low and, therefore, the auditor should evaluate the data, significant assumptions, and methods used by the

[109] *See* AS 1210.10, as amended.

[110] *See* first note to AS 1210.05, as amended. *See also* AS 1210.10, as amended, for a description of other factors affecting the necessary extent of the auditor's review.

[111] *See* AS 1210.11, as amended.

[112] The concept of a ''low degree of objectivity'' is used in paragraph .18 of AS 2201, *An Audit of Internal Control Over Financial Reporting That Is Integrated with An Audit of Financial Statements,* and, therefore, should be familiar to auditors.

[113] *See* AS 1210.11, as amended.

specialist under the requirements in Appendix A of AS 1105, as amended.

Some commenters on the Proposal suggested the Board should provide additional guidance to specify the steps to be performed by auditors to assess the objectivity of an auditor-engaged specialist, as well as what constitutes sufficient appropriate evidence to support this assessment. One commenter asserted that auditors would face challenges in assessing the objectivity of the entity that employs the specialist, as required under the Proposal, and suggested that auditors may be unable to obtain the policies, procedures, and systems, if any, of the entity employing the specialist. This commenter suggested either omitting the requirement to consider the objectivity of the specialist's employer or limiting the requirement to performing inquiry of the specialist.

After considering these comments, the Board has eliminated the assessment of the objectivity of the entity that employs the specialist as a separate requirement under the final requirements. Instead, the auditor is required to evaluate relationships between the company and both the specialist and the specialist's employer to determine whether either has a relationship with the company that may adversely affect the specialist's objectivity.[114] This is consistent with existing AS 1210, under which a specialist may be either an individual or an entity. Additionally, outreach to specialist entities and audit firms suggests that audit firms have policies and procedures for evaluating relationships between a specialist entity that they engage and the company. Accordingly, the concept of assessing relationships between a company and an entity that employs specialists should be familiar to auditors.

As under the Proposal, the final amendments do not prescribe the procedures the auditor must perform to obtain information relevant to the auditor's assessment. In response to questions raised by commenters, the Board added a note to clarify that the evidence necessary to assess the specialist's objectivity depends on the significance of the specialist's work and the related risk of material misstatement.[115] Under this principles-based approach, as the significance of the specialist's work and the risk of material misstatement increase, the persuasiveness of the evidence the auditor should obtain for this assessment also increases.

In addition, the note includes non-exclusive examples of potential sources of information that could be relevant to the auditor's assessment of the relationship to the company of both the specialist and the specialist's employer.[116] These examples include responses to questionnaires provided to the specialist regarding relationships between the specialist, or the specialist's employer, and the company. As with the auditor's assessment of a specialist's knowledge, skill, and ability, certain sources of information may provide more persuasive evidence than others. In situations where more persuasive evidence is required, it may be appropriate to perform procedures to obtain evidence from multiple sources.

Comparison With Standards of Other Standard Setters

Paragraph 9 of ISA 620 provides that in the case of an auditor's external expert, the evaluation of objectivity shall include inquiry regarding interests and relationships that may create a threat to that expert's objectivity.

AU–C Section 620 contains requirements that are similar to those in ISA 620.

Informing the Specialist of the Work To Be Performed, Determining the Extent of Review, and Evaluating the Work of the Specialist

See AS 1210.06–.12, as Amended

As is the case with respect to an auditor-employed specialist, the auditor uses an auditor-engaged specialist to assist the auditor in obtaining and evaluating audit evidence. Given the similar role of an auditor-employed and an auditor-engaged specialist in the audit, the final requirements for the auditor-engaged specialist are parallel to the requirements for the auditor-employed specialist when determining the extent of the auditor's review, informing the auditor-engaged specialist of the work to be performed, and evaluating the work of the auditor-engaged specialist. These final requirements are discussed in additional detail above.

Some commenters on the Proposal commented on the impact of certain proposed changes solely with respect to auditor-engaged specialists. These comments are discussed below.

One commenter on the Proposal expressed concern that the auditor may have limited access to proprietary models used by auditor-engaged specialists. This commenter recommended that the Board include statements made in the Proposal regarding the auditor's access to such models and the impact on the auditor's performance obligations in the final amendments. Similar to the Proposal, the final amendments do not require the auditor to have full access to a specialist's proprietary model or to reperform the work of the specialist, but instead require the auditor to evaluate the work of that specialist in accordance with the final standard. Under AS 1210.10, as amended, the necessary extent of the evaluation of the specialist's work, including a determination of the necessary access to a specialist's model, depends upon (1) the significance of the specialist's work to the auditor's conclusion regarding the relevant assertion; (2) the risk of material misstatement of the relevant assertion; and (3) the knowledge, skill, and ability of the specialist. For example, if the specialist used a proprietary model to develop an independent expectation, the auditor would need to obtain information from the specialist to assess whether the specialist's model was in conformity with the applicable financial reporting framework and to evaluate differences between the independent expectation and the company's recorded estimate.

Another commenter recommended including a requirement to inform auditor-engaged specialists of the need to apply professional skepticism, similar to the requirement for auditor-employed specialists in proposed AS 1201.C6. A different commenter recommended that the requirements for informing the specialist of the work to be performed should include communicating the auditor's need to exercise professional skepticism to the auditor-engaged specialist, so that the specialist is aware that relevant information should be passed on to the auditor.

The Board considered these comments and determined to adopt the requirement to inform the specialist of the work to be performed substantially as proposed. Due professional care in the performance of audit procedures requires the auditor to exercise professional skepticism, including a questioning mind and a critical assessment of audit evidence.[117] The Board did not propose extending the auditing standard on due professional care to auditor-engaged specialists and,

[114] *See* AS 1210.05, as amended. For example, the specialist's employer might have an ownership or other financial interest with respect to the company, or other business relationships that might be relevant to the auditor's assessment of the specialist's ability to exercise objective and impartial judgment.

[115] *See* second note to AS 1210.05, as amended.

[116] *Id.* These examples were based on examples set forth in the Proposal, but have been refined to better reflect their application in practice.

[117] *See* AS 1015.07.

therefore, no change has been made to AS 1210, as amended. While there is no requirement for auditors to make the engaged specialist aware of the auditor's responsibility to exercise professional skepticism, auditors nevertheless may decide to communicate the auditor's responsibility to the auditor-engaged specialist.

Some commenters asserted that the discussion of the auditor's assessment of disclaimers, limitations, and restrictions related to the report of a company's specialist was equally applicable to the report of the auditor-engaged specialist and recommended similar guidance be provided when using the report of an auditor-engaged specialist. Under the final amendments, the auditor's evaluation of the specialist's report or equivalent documentation includes considering the effect of any restrictions, limitations, or disclaimers in the specialist's report or equivalent documentation on both (1) the relevance and reliability of the audit evidence the specialist's work provides and (2) how the auditor can use the report of the specialist.[118] For example, a specialist's report that states ''the values in this report are not an indication of the fair value of the underlying assets'' generally would not provide sufficient appropriate evidence related to fair value measurements. On the other hand, a specialist's report that indicates that the specialist's calculations were based on information supplied by management may still be appropriate for use by the auditor to support the relevant assertion, since the auditor would be required to test the data that was produced by the company and used in the specialist's calculations

Comparison With Standards of Other Standard Setters

The comparative requirements of the IAASB and the ASB were discussed above.

Other Considerations

The Board proposed to rescind two auditing interpretations.[119] The Board has taken commenters' views into account and determined not to rescind these interpretations at this time. The Board is incorporating key elements of each interpretation, however, in the final amendments. These matters are discussed below, along with certain requirements in existing AS 1210 that are not specifically addressed in the final amendments.

Auditing Interpretation AI 11, Using the Work of a Specialist: Auditing Interpretations of AS 1210

The Board proposed to rescind AI 11 in the Proposal. AI 11 provides guidance for auditing transactions involving transfers of financial assets, such as in securitizations that are accounted for under Statement of Financial Accounting Standards No. 140.[120] The interpretation addresses an auditor's use of a legal opinion obtained from a company's legal counsel on matters that may involve the U.S. Bankruptcy Code, rules of the Federal Deposit Insurance Corporation (''FDIC''),[121] and other federal, state, or foreign law to determine whether ''transferred assets have been isolated from the transferor—put presumptively beyond the reach of the transferor and its creditors, even in bankruptcy or other receivership,'' which affects the accounting for the transaction under FAS No. 140. AI 11 also reiterates certain requirements in generally accepted accounting principles and PCAOB auditing standards. In addition, the interpretation includes illustrative examples of legal isolation letters based on FAS No. 140 and certain provisions of the FDIC's original rule, both of which have been subsequently amended.

A few commenters supported the proposed rescission. A number of other commenters, however, expressed concern about the proposed rescission of AI 11, stating that it continues to provide useful guidance to auditors regarding the necessary audit evidence to support management's assertion that a transfer of financial assets has met the isolation criterion of ASC 860–10–40, *Transfers and Servicing.* One commenter asserted that companies would struggle to anchor their accounting conclusions to guidance on the existing auditing standards if AI 11 was rescinded.

After considering comments and the continued use of the interpretation in practice, the Board determined not to rescind AI 11 at this time. The final amendments have been revised to include conforming changes to AI 11 to remove outdated references to existing AS 1210, which has been replaced and retitled.

The amended standards for using the work of a company's specialist also incorporate certain principles from AI 11. As discussed in AI 11, legal opinions are sometimes necessary evidence to support an auditor's conclusion about the proper accounting for transfers of financial assets. Accordingly, the final amendments clarify that Appendix A of AS 1105, as adopted, applies in situations when an auditor uses the work of a company's attorney as audit evidence in other matters relating to legal expertise, such as when a legal interpretation of a contractual provision or a legal opinion regarding isolation of transferred financial assets is necessary to determine appropriate accounting or disclosure under the applicable financial reporting framework.[122] The provision emphasizes the importance of legal opinions as audit evidence in certain contexts and clarifies the requirements the auditor should be applying in such circumstances.

Auditing Interpretation AI 28, Evidential Matter Relating to Income Tax Accruals: Auditing Interpretations

The Board also proposed to rescind AI 28 in the Proposal. AI 28 provides guidance about matters related to auditing the income tax accounts in a company's financial statements. Topics covered by the interpretation include restrictions on access to the company's books and records related to its income tax calculation, documentation of evidence obtained in auditing the income tax accounts, and use of tax opinions from company legal counsel and tax advisors. The interpretation also reiterates certain requirements from PCAOB auditing standards.

Most commenters did not express a view regarding the proposed rescission of AI 28. A few commenters supported the proposed rescission. Two commenters asserted that AI 28 provides useful guidance to auditors regarding tax specialists and tax working papers and should be retained. The Board has considered these comments and determined not to rescind AI 28 at this time.

The Board recognizes that written advice or opinions of a company's tax advisor or tax legal counsel on material tax matters are sometimes necessary evidence to support the auditor's

[118] *See* note to AS 1210.12, as amended.

[119] Auditing interpretations provide guidance the auditor should be aware of and consider related to specific areas of the audit. *See* paragraph .11 of AS 1001, *Responsibilities and Functions of the Independent Auditor.*

[120] *See* Financial Accounting Standards Board (''FASB''), Statement of Financial Accounting Standards (''FAS'') No. 140, *Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities.* This standard was subsequently amended by FAS No. 166, *Accounting for Transfers of Financial Assets—an amendment of FASB Statement No. 140,* and codified into FASB Accounting Standards Codification (''ASC''), Topic 860, *Transfers and Servicing.*

[121] Subsequent to the Board's adoption of AI 11, the FDIC rule regarding the treatment of financial assets transferred by an institution in connection with a securitization or participation was amended in 2010.

[122] *See* second note to AS 1105.A1, as adopted.

conclusions on income tax accounts. Accordingly, the Board revised the final amendments to acknowledge such situations and to clarify that, if an auditor plans to use an opinion of legal counsel or the advice of a tax advisor on specific tax issues as audit evidence, it is not appropriate for the auditor to rely solely on that opinion or advice with respect to those tax issues.[123] Instead, the auditor needs to evaluate the analysis underlying the tax opinion or tax advice to determine whether it provides relevant and reliable evidence, taking into account the requirements of the applicable financial reporting framework.

Certain Requirements of Existing AS 1210—Discussion of Remaining Requirements Not Specifically Addressed in the Final Amendments

Decision to use a specialist. Existing AS 1210 states that an auditor may encounter complex or subjective matters that are potentially material to the financial statements. It further provides that such matters, examples of which are provided, may require special skill or knowledge and in the auditor's judgment require using the work of a specialist to obtain appropriate evidential matter.[124] The final amendments do not retain this language, as this issue is already addressed in AS 2101. Specifically, AS 2101.16 requires the auditor to determine whether specialized skill or knowledge is needed to perform appropriate risk assessments, plan or perform audit procedures, or evaluate audit results.

Reporting requirements. Existing AS 1210 prohibits auditors from making reference to the work or findings of a specialist in the auditor's report, unless such reference will facilitate an understanding of the reason for an explanatory paragraph, a departure from an unqualified opinion, or a critical audit matter (''CAM''). A CAM is defined as any matter arising from the audit of the financial statements that was communicated or required to be communicated to the audit committee and that relates to accounts or disclosures that were material to the financial statements and involved especially challenging, subjective, or complex auditor judgment.[125] Depending on the circumstances, the description of such CAMs might include a discussion of the work or findings of a specialist.

No commenters objected to omitting the prohibition in existing AS 1210 from the proposed amendments. For the reasons discussed above, the Board did not make changes to the final amendments to incorporate these extant requirements.

Other Aspects of the Final Amendments

The Board adopted additional amendments to conform its standards to the final requirements in AS 1105, AS 1201, and AS 1210, as amended. Those conforming amendments to AS 1015, AS 2301, AS 2310, *The Confirmation Process,* AS 2401, *Consideration of Fraud in a Financial Statement Audit,* AS 2610, *Initial Audits—Communications Between Predecessor and Successor Auditors,* AT 601, *Compliance Attestation,* and AT 701, *Management's Discussion and Analysis,* do not change the meaning of existing requirements.

Effective Date

The Board determined that the final amendments take effect, subject to approval by the SEC, for audits of financial statements for fiscal years ending on or after December 15, 2020.

The Board sought comment on the amount of time auditors would need before any amendments would become effective, if adopted by the Board and approved by the SEC. A number of commenters supported an effective date of two years after SEC approval of final amendments, asserting that this would allow firms sufficient time to develop tools, update methodologies, and provide training on the new requirements. A few commenters also emphasized the importance of having the same effective date for any new standards on using the work of specialists and auditing accounting estimates.

While recognizing other implementation efforts, the effective date determined by the Board is designed to provide auditors with a reasonable period of time to implement the final amendments, without unduly delaying the intended benefits resulting from these improvements to PCAOB standards. The effective date is also aligned with the effective date of the related standards and amendments being adopted in the Estimates Release.

D. Economic Considerations and Application to Audits of Emerging Growth Companies

The Board is mindful of the economic impacts of its standard setting. This economic analysis describes the baseline for evaluating the economic impacts of the final amendments, analyzes the need for the final amendments, and discusses potential economic impacts of the final amendments, including the potential benefits, costs, and unintended consequences. The analysis also discusses alternatives considered.

In the Proposal, the Board had requested input from commenters on their views pertinent to the economic considerations, including the potential benefits and costs, discussed in the Proposal. One commenter stated that it believed the Proposal can be effectively implemented with minimal cost. Several commenters expressed concern, however, that the cost of the Proposal would be relatively greater for smaller audit firms and certain smaller companies. Some commenters also asserted that the Proposal would adversely affect the ability of smaller firms to compete in the audit services market. A number of commenters suggested that the incremental cost of certain aspects of the Proposal would outweigh any increase in audit quality. Finally, some commenters expressed concern that the Proposal could result in a shortage of qualified specialists due to, for example, a potential increase in the demand for specialists by some audit firms under the proposed requirements.[126]

The Board has considered all comments received, and has made certain changes to the final amendments to reflect those comments, including changes that mitigate some of the concerns expressed above with respect to the Proposal. The Board has also sought to develop an economic analysis that evaluates the potential benefits and costs of the final amendments, as well as facilitates comparisons to alternative Board actions. There are limited data and research findings available to estimate quantitatively the economic impacts of discrete changes to auditing standards in this area, and furthermore, no additional data was identified by commenters that would allow the Board to generally quantify the expected economic impacts (including expected incremental costs related to the Proposal) on audit firms or companies.[127] Accordingly, the Board's discussion of the economic impact is qualitative in nature.

[123] *See* footnote 1 to AS 1105.A1, as adopted; note to AS 2505.08, as amended.

[124] *See* existing AS 1210.06.

[125] *See* AS 3101.11–.17.

[126] *See* below for a discussion of revisions to the proposed requirements in the final amendments to address this concern.

[127] One commenter provided anecdotal data on certain aspects of the Proposal that was limited to the commenter's experience in one specialized area. The data provided by this commenter, therefore, could not be used to quantify expected economic impacts that would generally apply to the use of the work of specialists.

Baseline

Section C above discusses existing PCAOB requirements for using the work of specialists and existing practice in the application of those requirements. This section addresses from an economic perspective: (1) The prevalence and significance of audits involving specialists; (2) the existing audit requirements that apply to the use of the work of specialists; and (3) the quality of audits that involve specialists, based on observations from regulatory oversight and academic literature.

Prevalence and Significance of Audits Involving Specialists

Evidence From PCAOB Inspections Data

The Proposal observed that the PCAOB staff's analysis of inspections data for audits of issuers suggests that larger audit firms extensively use the work of specialists, in particular auditor-employed specialists, while smaller audit firms generally have a lower percentage of audit engagements in which they use the work of a company's specialist or an auditor's specialist.

The conclusion regarding larger audit firms was based on a PCAOB staff analysis of the 274 issuer audits [128] by U.S. audit firms affiliated with global networks [129] that were selected for inspection in 2015. This analysis found that auditors used the work of at least one auditor-employed specialist in about 85 percent of those audits. For the 85 percent of those audits that involved the use of auditor-employed specialists, an average of four to five individual specialists performed some work on each audit. In addition, on each of those audits, specialists performed work in one to two fields of expertise on average.[130] The results indicate that such audits typically had more than one specialist performing work in the same area of expertise.

The Proposal further noted that PCAOB inspections data for issuer audits suggested that, in contrast to larger audit firms, smaller U.S. audit firms generally have fewer audit engagements in which they use the work of a company's specialist or an auditor's specialist. Specifically, the PCAOB staff analyzed data from the 361 audits performed by U.S. audit firms not affiliated with one of the global networks that were selected for inspection by the PCAOB in 2015. Of those 361 issuer audits, the PCAOB staff identified: (1) 36 Audits (*i.e.,* about 10% of the analyzed audit engagements) in which the auditor used the work of a company's specialist but did not use the work of an auditor's specialist; (2) 24 audits (*i.e.,* about 7% of the analyzed audit engagements) in which the auditor used the work of an auditor's specialist but did not use the work of a company's specialist; (3) 30 audits (*i.e.,* about 8% of the analyzed audit engagements) in which the auditor used the work of a company's specialist and an auditor's specialist; and (4) 271 audits (*i.e.,* about 75% of the analyzed audit engagements) in which the auditor neither used the work of a company's specialist nor used an auditor's specialist.

A PCAOB staff analysis of the 700 issuer audits by audit firms that were selected for inspection in 2017 is broadly consistent with the conclusions in the Proposal regarding the prevalence and significance of audits involving specialists.[131] The results of this analysis are summarized in the table below:

FIGURE 5—AUDITS PERFORMED BY U.S. AND NON-U.S. AUDIT FIRMS THAT WERE SELECTED FOR INSPECTION BY THE PCAOB IN 2017, CATEGORIZED BY USE OF THE WORK OF SPECIALISTS

	% (number) of audits by larger audit firms (U.S.)	% (number) of audits by smaller audit firms (U.S.)	% (number) of audits by larger audit firms (non-U.S.)	% (number) of audits by smaller audit firms (non-U.S.)
(1) auditor used the work of a *company's specialist* but did not use the work of an *auditor's specialist*	8% (26)	10% (28)	8% (7)	6% (1)
(2) auditor used the work of an *auditor's specialist* but did not use the work of a *company's specialist*	20% (66)	2% (6)	34% (29)	0% (0)
(3) auditor used the work of both a *company's specialist* and an *auditor's specialist*	41% (136)	6% (17)	29% (25)	0% (0)
(4) auditor neither used the work of a *company's specialist* nor used an *auditor's specialist*[132]	31% (102)	81% (216)	29% (25)	94% (16)
Total[133]	100% (330)	100% (267)	100% (86)	100% (17)

Source: PCAOB.

As indicated by Figure 5, auditors used the work of an auditor's specialist in 61% and 63% of the analyzed audit engagements (the sum of categories (2) and (3) above) by larger audit firms—U.S. and non-U.S. firms, respectively—selected for inspection in 2017. Auditors used the work of a company's specialist without also using the work of an auditor's specialist (category (1) above) in only 8% of the analyzed audit engagements of larger audit firms—both

[128] This analysis was performed on engagement-level data obtained through PCAOB inspections. The audits inspected by the PCAOB are most often selected based on risk rather than selected randomly, and these numbers may not represent the use of the work of specialists across a broader population of companies. On average, the engagements selected for inspection are more likely to be complex (and thus more likely to involve the use of the work of a specialist) than the overall population of audit engagements.

[129] These firms consist of those U.S. audit firms that are registered with the PCAOB and affiliated with one of the six largest global networks, based on information on network affiliations reported by U.S. audit firms on Form 2 in 2017 and identified on the ''Global Networks'' overview page, available on the Board's website.

[130] The data used in this analysis did not indicate how frequently the auditor used the work of an auditor-engaged specialist.

[131] The discussion in note 128 that applies to the 2015 analysis—regarding the selection of inspected audit engagements and how such engagements likely compare to the overall population of audit engagements—likewise applies to this 2017 analysis. Unlike the 2015 analysis, the engagement-level data selected for the analysis of PCAOB inspections performed in 2017 included data on issuer audit engagements conducted by non-U.S. as well as U.S. audit firms. In addition, this engagement-level data was based on specific focus areas, such as recurring audit deficiencies and audit areas that may involve significant management or auditor judgment, for issuer audit engagements selected for inspection. For a more detailed discussion of PCAOB inspection focus areas, *see* PCAOB, *Staff Inspection Brief: Information about 2017 Inspections,* Vol. 2017/3 (Aug. 2017).

[132] The audit engagements not included in the preceding three categories were included in the fourth category.

[133] The total for the values shown in categories (1) through (4) may not add to 100% due to rounding.

U.S. and non-U.S. firms, respectively—selected for inspection in 2017. These results are also consistent with the anecdotal evidence discussed in section C (*i.e.,* that larger audit firms generally require their engagement teams to evaluate the work of a company's specialist, including the specialist's methods and significant assumptions, and often employ specialists to assist their audit personnel in evaluating that work).

The results for smaller audit firms in Figure 5 are also consistent with the analysis in the Proposal and suggest that the work of an auditor's specialist or a company's specialist is used in relatively few audits. Specifically, in 81% and 94% of the audits by smaller audit firms—U.S. and non-U.S. firms, respectively—the auditor neither used the work of a company's specialist nor used an auditor's specialist (category (4) above), possibly because those audits did not involve circumstances that warranted the use of specialists by companies or their auditors. Consistent with the analysis of the issuer audits selected for inspection in 2015, the results for smaller audit firms in Figure 5 further suggest that, when smaller audit firms use the work of a company's specialist, they often use that work without concurrently using the work of an auditor's specialist. In 62% of the audits by smaller U.S. firms that involved the use of the work of a company's specialist, the audit firm did not concurrently use the work of an auditor's specialist.[134] An auditor's specialist also was not concurrently involved in the only audit by a smaller non-U.S. firm that involved the use of the work of a company's specialist (category (1) above).

Evidence From the Academic Literature

Consistent with the results of the PCAOB staff analysis, the academic literature suggests that, when a company uses a company's specialist, some larger audit firms also tend to use the work of an auditor's specialist, at least in the context of audits involving challenging fair value measurements.[135] Furthermore, the academic literature also suggests that the use of valuation specialists is prevalent for at least some audits. One recent study of audits by the four largest firms that involved challenging fair value measurements found that 86% of audit teams used an auditor's specialist, including employed and engaged specialists.[136] In addition, 60% of the companies in this study used a company's specialist, including employed and engaged specialists.[137] The audits that were included in this study may not be representative of all audit engagements, because they were selected in order to study engagements that involved material, highly challenging fair value measurements. However, the results suggest that the use of an auditor's specialist is at least prevalent among audits performed by the four largest U.S. firms where a company's specialist is used to assist in the development of highly challenging and material fair value measurements, which may also be audit areas with a high risk of material misstatement and thus a need for greater audit attention.[138]

Furthermore, the academic literature also corroborates the characterizations discussed in section C regarding the current practice of audit firms when using specialists. Academic studies suggest that, at least among the audits that were studied where specialists were used, larger firms were more likely to use the work of auditor-employed specialists than auditor-engaged specialists in their engagements,[139] while even among the larger firms there are differences in the extent of their use of the work of auditor-engaged specialists.[140]

A possible explanation for the tendency of larger firms to use the work of auditor-employed specialists (instead of auditor-engaged specialists) is that larger firms, due to the greater number of their audit engagements or their existing non-auditing practices, have sufficient demand for the services of specialists to warrant hiring specialists who work for them full-time. In contrast, smaller firms may not have many audit engagements where the auditor requires the use of an auditor's specialist, so that engaging an auditor's specialist only as needed may be economically more advantageous. In addition, the tendency of smaller firms to look to the work of a company's specialist without using the work of an auditor's specialist may reflect the fact that existing AS 1210 enables the auditor to use the work of a company's specialist in a wide range of situations, without imposing obligations on the auditor that might call for the retention of an auditor's specialist.[141]

PCAOB Auditing Standards Regarding Use of the Work of Specialists

As discussed in more detail in section C, under existing standards, the auditor's primary responsibilities with respect to a company's specialist are set forth in existing AS 1210. That standard also imposes the same responsibilities on auditors with respect to an auditor-engaged specialist, even though an auditor-engaged specialist has a

[134] Specifically, out of the 45 audit engagements of smaller U.S. firms that involved the use of the work of a company's specialists (the sum of categories (1) and (3) in Figure 5), 28 engagements did not concurrently involve the use of the work of an auditor's specialist (category (1) in Figure 5).

[135] *See, e.g.,* Nathan H. Cannon and Jean C. Bedard, *Auditing Challenging Fair Value Measurements: Evidence From the Field,* 92 (4) The Accounting Review 81 (2017) (study using an experiential questionnaire involving audit partners and managers of Big 4 firms in audits involving challenging fair value measurements).

[136] *See* Cannon and Bedard, *Auditing Challenging Fair Value Measurements: Evidence From the Field* 90. In another study of how auditors use valuation specialists, auditors from seven large U.S. audit firms who were interviewed stated that, on average, 61% of their engagements in the prior year involved a valuation specialist, including auditor-employed and/or auditor-engaged specialists. *See* Emily E. Griffith, *Auditors, Specialists, and Professional Jurisdiction in Audits of Fair Values* 13 (July 2016) (working paper, available in Social Science Research Network (''SSRN'')).

[137] *See* Cannon and Bedard, *Auditing Challenging Fair Value Measurements: Evidence From the Field* 90.

[138] Another recent qualitative study conducted through interviewing audit partners, managers, and seniors also observed that auditors in the six large audit firms in Canada consider factors such as the ''client's regulatory environment and other general risk factors,'' ''lack of subject matter expertise within the audit team,'' and ''complexity of the engagement'' when determining whether to use a specialist. *See* J. Efrim Boritz, Natalia Kochetova-Kozloski, Linda A. Robinson, and Christopher Wong, *Auditors' and Specialists' Views About the Use of Specialists During an Audit* 28, 35 (Mar. 2017) (working paper, available in SSRN).

[139] *See, e.g.,* Steven M. Glover, Mark H. Taylor, and Yi-Jing Wu, *Current Practices and Challenges in Auditing Fair Value Measurements and Complex Estimates: Implications for Auditing Standards and the Academy,* 36 (1) Auditing: A Journal of Practice & Theory 63, 75 (2017) (''[R]esults indicate that approximately two-thirds (one-third) of our participants reported that they use in-house (third-party) valuation specialists to support the audit work performed for financial FVMs [*i.e.,* fair value measurements]. Moreover, approximately 87 percent (13 percent) of the audit partners indicated that they use in-house (third-party) valuation specialists to support the audit work for nonfinancial FVMs.''); *see also* Emily E. Griffith, Jacqueline S. Hammersley, and Kathryn Kadous, *Audits of Complex Estimates as Verification of Management Numbers: How Institutional Pressures Shape Practice,* 32 Contemporary Accounting Research 833, 836 (2015) (''[A]uditors [from the U.S. audit firms affiliated with the six largest global networks] typically enlist audit-firm specialists in auditing estimates because they do not have valuation expertise. . .'').

[140] *See* Griffith, *Auditors, Specialists, and Professional Jurisdiction in Audits of Fair Values* 58. In this study, all participating auditors from Big 4 audit firms indicated that they used internal valuation specialists (*i.e.,* auditor-employed valuation specialists) and did not use any external valuation specialists (*i.e.,* auditor-engaged valuation specialists). In contrast, only 40% of the auditors from the three other audit firms that participated in the study indicated that they exclusively used internal valuation specialists.

[141] Similarly, the final amendments enable the auditor to use the work of a company's specialist in a wide range of situations, without necessarily obligating the auditor to retain an auditor's specialist.

fundamentally different role than a company's specialist. While the auditor's specialist performs work to assist the auditor in obtaining and evaluating audit evidence, the company's specialist performs work that is used by the company in preparing its financial statements and that the auditor may use as audit evidence.

The professional relationships between an auditor and a company's specialist, and between an auditor and an auditor's specialist, differ, among other things, in terms of who is employing or engaging the specialist (*i.e.,* the company in the case of a company's specialist and the auditor in the case of an auditor's specialist). Therefore, the level of control and oversight an auditor is able to exercise over the specialist also differs. Given these differences, which expose a company's specialist and an auditor-engaged specialist to different incentives and biases (*e.g.,* pressure to conform to management bias),[142] requirements would ideally differentiate between the two types of specialists, but existing requirements do not do so.

In contrast, existing PCAOB requirements for using the work of an auditor-employed specialist, who is subject to supervision under AS 1201, differ from the requirements that apply to using the work of an auditor-engaged specialist. Auditor-employed and auditor-engaged specialists may differ in their economic dependency on the auditor and, by extension, could face different incentives to acquiesce to certain auditor decisions, such as a decision by the auditor to downplay or suppress unfavorable information in order to accommodate a conclusion sought by the auditor.[143] While anecdotal evidence from the academic literature related to a company's specialists suggests that employed specialists may face stronger incentives to do so than engaged specialists,[144] it is difficult to generalize as to whether auditor-employed specialists have a greater economic dependency on auditors than auditor-engaged specialists.[145] Any potential bias by auditor-employed and auditor-engaged specialists arising from economic dependency on the auditor may be mitigated by the responsibility imposed directly on the engagement partner under AS 1201 for supervision of the work of engagement team members and compliance with PCAOB standards, including those regarding using the work of specialists. In addition, AS 1220 requires the engagement quality reviewer to ''evaluate the significant judgments made by the engagement team and the related conclusions reached in forming the overall conclusion on the engagement and in preparing the engagement report.'' Such significant judgments may include areas where auditors used the work of an auditor-employed or auditor-engaged specialist.

Furthermore, auditor-employed and auditor-engaged specialists serve similar roles in helping auditors obtain and evaluate audit evidence. Given their similar roles, it seems appropriate that the auditor would follow similar requirements when using both types of specialists, though existing requirements differ for the two types of specialists. A notable difference in the relationship of the auditor with auditor-employed and auditor-engaged specialists, however, relates to the integration of auditor-employed specialists (as compared with auditor-engaged specialists) in an audit firm's or network's quality control systems, which allows the auditor greater visibility into any relationships that might affect the auditor-employed specialist's independence, as well as greater visibility into the auditor-employed specialist's knowledge, skill, and ability. The final requirements with respect to evaluating the objectivity, as well as knowledge, skill, and ability, of an auditor-engaged specialist, therefore, sought to reflect that difference by providing the auditor with specific requirements to assess whether the auditor-engaged specialist has both the necessary objectivity to exercise impartial judgment on all issues encompassed by the specialist's work related to the audit and the level of knowledge, skill, and ability to perform the specialist's work related to the audit.

As discussed in more detail below, given the similar role of an auditor-employed and an auditor-engaged specialist in the audit, the auditor's procedures for reaching an understanding with the specialist and evaluating the work to be performed by the specialist should be similar. However, due to the differences in the auditor's ability to assess the specialist's independence, as well as the specialist's knowledge, skill, and ability, the Board is adopting separate, but parallel, requirements for using the work of an auditor-employed specialist and an auditor-engaged specialist. It is expected that there would be few differences in the procedures undertaken by the auditor when using an auditor's specialist, whether employed or engaged, with such differences limited to the auditor's assessment of the knowledge, skill, ability, and objectivity of an auditor-engaged specialist (where the auditor may not be able to leverage an audit firm's or network's quality control system to perform these assessments).

Quality of Audits That Involve Specialists

As discussed in section C, PCAOB oversight of audit engagements in which auditors used the work of a company's or an auditor's specialist and SEC enforcement actions have identified instances of noncompliance with PCAOB standards, *e.g.,* situations where auditors did not appropriately evaluate the work of specialists. For issuer audit engagements, PCAOB staff have more recently observed a decline in the number of instances in which auditors at some audit firms did not perform sufficient procedures related to the work of an auditor's specialist. There are some preliminary indications that some, but not all, firms with observed deficiencies have undertaken remedial actions in response to such findings,

[142] For a discussion of pressures facing a company's specialist, *see* Divya Anantharaman, *The Role of Specialists in Financial Reporting: Evidence from Pension Accounting,* 22 Review of Accounting Studies 1261, 1299–300 (2017) (concluding that ''client pressure and opinion shopping'' affect the work product of actuaries used by company management, which ''suggests potentially greater effects for other specialists not subject to the same levels of oversight (*e.g.,* experts in valuing complex financial instruments and other untraded assets)'' and that ''economically important clients of their actuaries use more aggressive (obligation-reducing) discount rates [than] less important clients of the same actuary'').

[143] *See, e.g.,* Griffith, *Auditors, Specialists, and Professional Jurisdiction in Audits of Fair Values* 32 (''[A]udit teams delete extraneous information in specialists' memos when that information contradicts what the audit team has documented in other audit work papers . . .'') and 33 (''Auditors and specialists described several defensive behaviors by auditors that restrict specialists' access to information . . . Restricting specialists' access to information can influence how specialists do their work, what work they do, and what conclusions they reach.'').

[144] *See, e.g.,* J. Richard Dietrich, Mary S. Harris, and Karl A. Muller III, *The Reliability of Investment Property Fair Value Estimates,* 30 Journal of Accounting and Economics 125, 155 (2001) (''[O]ur investigation reveals that the reliability of fair value estimates varies according to the relation between the appraiser and the [company] (internal versus external appraiser) . . . We find evidence that appraisals conducted by external appraisers result in relatively more reliable fair value accounting estimates (*i.e.,* lower conservative bias, greater accuracy and lower managerial manipulation).'').

[145] The extent of economic dependency of an auditor-employed specialist on the auditor will depend, for example, on how much of the specialist's work and the specialist's compensation is related to audits (as opposed to non-audit services), which may vary for different auditor-employed specialists. Similarly, the extent of economic dependency of an auditor-engaged specialist on the auditor will depend on how much of the specialist's overall work or income is connected to the particular audit firm, which may vary for different auditor-engaged specialists.

which may have contributed, at least in part, to improvements in audit quality related to the auditor's use of an auditor's specialist.

Relatively few empirical academic studies have explicitly examined the relationship between the use of specialists and perceptions of audit quality by investors and auditors.[146] This may be because it is difficult, especially for investors, to assess the effect of using specialists on audit quality independently from the effects of other relevant factors, such as the quality of the company's financial reporting or internal controls.[147] However, available studies have investigated the relationship between the quality of financial statement estimates, which often are provided with the assistance of a company's specialist, and the usefulness of such estimates to investors. These studies find that less reliable estimates tend to be less useful to investors.[148] Other studies suggest that some estimates are also more likely to be discounted by investors.[149] Because investors' perceptions of the credibility of financial statements are influenced by their perceptions of audit quality, the auditor's appropriate use of the work of specialists should increase the credibility of the accounting estimates included in the financial statements.

Need for the Rulemaking

From an economic perspective, the primary cause for market failure [150] that motivates the need for the final amendments is the moral hazard [151] affecting the auditor's decisions on how to implement audit procedures related to the use of the work of a specialist, which increases the risk of lower audit quality from the investor's perspective.

As described in the Proposal, the moral hazard problem related to the use of the work of a specialist generally manifests in the auditor not performing appropriate procedures, even though such procedures would improve audit quality by increasing the auditor's attention, because the auditor may not perceive sufficient economic benefit (compared to the corresponding costs [152] and efforts) from such actions. Specifically, when auditors use the work of a company's specialist, moral hazard may take the form of the auditor failing to evaluate data, significant assumptions, and methods used by the specialist to an extent that would be commensurate with the risk of material misstatement inherent in the specialist's work. Moral hazard in the context of auditors using the work of a company's specialist might also take the form of the auditor failing to appropriately assess relationships between the company's specialist and the company.[153] In addition, when auditors use the work of an auditor's specialist, moral hazard may, for example, take the form of not performing procedures, or performing insufficient procedures, to communicate and reach an understanding with the specialist regarding the specialist's responsibilities and the objectives of the specialist's work, or insufficiently evaluating that work.[154]

In such contexts, moral hazard is made possible by the information asymmetry [155] that exists due to the lack of transparency about the nature of the auditor's work (*i.e.,* between the auditor on the one hand, and investors on the other hand). Investors typically do not know whether an auditor used the work of a specialist and, if so, how the work of the specialist was used. Because of this information asymmetry, the auditor may face little to no scrutiny from investors or others (*e.g.,* audit committees) regarding his or her audit procedures when using the work of specialists,[156] and may perceive limited

[146] *See, e.g.,* Brant E. Christensen, Steven M. Glover, Thomas C. Omer, Marjorie K Shelley, *Understanding Audit Quality: Insights from Audit Professionals and Investors,* 33 Contemporary Accounting Research 1648, 1667 (2016) (''Audit professionals [that were surveyed as part of the study] associate the use of both external experts and internal specialists with higher audit quality.''). Relatedly, one recent academic study examined the relationship between the use of forensic accountants (described by the authors as ''specialists'') and the value of their involvement as perceived by the auditor. While forensic accountants are not specialists within the scope of this standard, the authors of the study argued that the findings ''likely translate into understanding other specialist domains.'' The authors suggested that the involvement of forensic accountants is accompanied by the ''incremental discovery of . . . material misstatements,'' and further stated that ''our results indicate both auditors and forensic specialists recognize the value and additional comfort that come from forensic specialist involvement on audits.'' *See* J. Gregory Jenkins, Eric M. Negangard, and Mitchell J. Oler, *Getting Comfortable on Audits: Understanding Firms' Usage of Forensic Specialists,* Contemporary Accounting Research, in-press 4 (2017).

[147] While not directly assessing the relationship between the use of specialists and perceptions of audit quality, academic literature has investigated factors that influence an auditor's approach to auditing accounting estimates, including the decision whether to use the work of specialists. *See, e.g.,* Jennifer R. Joe, Scott D. Vandervelde, Yi-Jing Wu, *Use of High Quantification Evidence in Fair Value Audits: Do Auditors Stay in their Comfort Zone?,* 92 (5) The Accounting Review 89 (2017); Emily E. Griffith, *When Do Auditors Use Specialists' Work to Improve Problem Representations of and Judgments about Complex Estimates?,* 93 (4) The Accounting Review 177 (2018).

[148] *See, e.g.,* Scott A. Richardson, Richard G. Sloan, Mark T. Soliman, and Irem Tuna, *Accrual Reliability, Earnings Persistence and Stock Prices,* 39 Journal of Accounting and Economics 437, 437–438 (2005) (finding that ''less reliable accruals lead to lower earnings persistence . . . leading to significant security mispricing'').

[149] *See, e.g.,* Chang Joon Song, Wayne B. Thomas, and Han Yi, *Value Relevance of FAS No. 157 Fair Value Hierarchy Information and the Impact of Corporate Governance Mechanisms,* 85 The Accounting Review 1375 (2010). Furthermore, the academic literature notes that auditing estimates with extreme uncertainty can pose significant challenges for auditors. *See, e.g.,* Brant E. Christensen, Steven M. Glover, and David A. Wood, *Extreme Estimation Uncertainty in Fair Value Estimates: Implications for Audit Assurance,* 31 (1) Auditing: A Journal of Practice & Theory 127 (2012).

[150] For a discussion of the concept of market failure, *see, e.g.,* Francis M. Bator, *The Anatomy of Market Failure,* 72 The Quarterly Journal of Economics 351 (1958); and Steven G. Medema, *The Hesitant Hand: Mill, Sidgwick, and the Evolution of the Theory of Market Failure,* 39 History of Political Economy 331 (2007).

[151] The moral hazard problem is also referred to as a hidden action, or agency problem, in economics literature. The term ''moral hazard'' refers to a situation in which an agent could take actions (such as not working hard enough) that are difficult to monitor by the principal and would benefit the agent at the expense of the principal. To mitigate moral hazard problems, the agent's actions need to be better aligned with the interests of the principal. Monitoring is one mechanism to mitigate these problems. *See, e.g.,* Bengt Holmström, *Moral Hazard and Observability,* 10 The Bell Journal of Economics 74 (1979).

[152] For a discussion of the effect of cost pressures on audit quality, *compare* James L. Bierstaker and Arnold Wright, *The Effects of Fee Pressure and Partner Pressure on Audit Planning Decisions,* 18 Advances in Accounting 25, 40 (2001) (finding, as the result of their experiment, that ''auditors significantly reduced budgeted hours . . . and planned tests . . . in response to fee pressure'') *with* Bernard Pierce and Breda Sweeney, *Cost-Quality Conflict in Audit Firms: An Empirical Investigation,* 13 European Accounting Review 415 (2004) (finding, in relation to the Irish market, that ''dysfunctional behaviours'' are related to time pressure and performance evaluation).

[153] *See* Anantharaman, *The Role of Specialists in Financial Reporting: Evidence from Pension Accounting,* at 1265 (describing empirical evidence that suggests that auditors ''have difficulty in screening out relationships'' that might impair the ''objectivity'' of company specialists).

[154] Alternatively, it is conceivable that, in some situations, moral hazard may take the form of the auditor either influencing the findings or conclusions that specialists reach or modifying the specialist's work after the fact to support the conclusions sought by the auditor. *See supra* note 143.

[155] Economists often describe ''information asymmetry'' as an imbalance, where one party has more or better information than another party. For a discussion of the concept of information asymmetry, *see, e.g.,* George A. Akerlof, *The Market for ''Lemons'': Quality Uncertainty and the Market Mechanism,* 84 The Quarterly Journal of Economics 488 (1970).

[156] This is true for other aspects of the audit engagement as well and hence the audit can be thought of providing investors with a credence service. Credence services are difficult for users of the service (such as investors in the context of company audit services) to value because their benefits are difficult to observe and measure. *See* Monika Causholli and W. Robert Knechel, *An Examination of the Credence Attributes of an Audit,* 26 Accounting Horizons 631 (2012). *See also* Alice Belcher, *Audit Quality and the Market for Audits: An Analysis of Recent UK Regulatory Policies,* 18

Continued

economic benefits (*e.g.,* gains in revenue, gains in professional reputation, or a reduction in potential liability) in incurring costs to perform additional audit work. Hence, the moral hazard problem between the auditor and investors may have a detrimental impact on audit quality.[157]

Because market forces (*e.g.,* pressure and demands from investors) may not be effective in making the auditor more responsive to investor interests with respect to the use of the work of specialists,[158] from an economic perspective, the situation absent standards would be characterized as a form of market failure. While existing standards regarding the use of the work of a company's specialist and an auditor-engaged specialist are intended to address and mitigate potential auditor moral hazard, they could be aligned more closely with the risk assessment standards, which could enhance audit quality. In addition, while auditor-employed specialists are supervised under a risk-based approach, specifying requirements for applying that approach when using an auditor-engaged specialist could promote an improved, more uniform approach to supervision. Additionally, if the work of an auditor's specialist is not properly overseen or evaluated (or the work of a company's specialist is not properly evaluated), there may be a heightened risk that the auditor's work will not be sufficient to detect a material misstatement in significant accounts and disclosures.

Furthermore, the auditor does not engage or employ a company's specialist and does not supervise the work of a company's specialist. This makes the auditor's use of the work of a company's specialist different from the auditor's use of an auditor's specialist in several important ways. First, because of the different relationships the auditor has with a company's specialist and with an auditor's specialist, the auditor's assessment of the qualifications and relationships of a company's specialist requires greater effort by the auditor compared to the auditor's equivalent procedures with respect to an auditor's specialist. Second, the auditor's consideration of data, significant assumptions, and methods used by the company's specialist may also be more challenging (for example, due to the specialist's use of proprietary data), compared to equivalent procedures performed by the auditor when using a specialist with whom the auditor has an employment or contractual relationship. Third, an auditor is generally more likely to be familiar with an auditor's specialist than with a company's specialist (*e.g.,* with the professional qualifications, reputation, and work), which reduces the costs associated with the ongoing monitoring of the specialist's work. Given these differences, the standards would ideally differentiate between the two types of specialists, but existing AS 1210 currently does not do so. Accordingly, the potential for moral hazard relating to the auditor's use of the work of a company's specialist is a particular focus of the requirements in the final amendments to AS 1105.

The need to enhance existing standards is further heightened by the fact that it may be particularly challenging for the auditor to evaluate the work of either an auditor's specialist or a company's specialist or to supervise an auditor's specialist. The work of a company's specialist or an auditor's specialist often involves professional judgment, the nature of which the auditor may not fully appreciate when evaluating the work of the specialist. In particular, the specialist's work is highly technical in nature and often is not entirely transparent to the auditor, who may not have complete access to the specialist's work[159] or the same level of knowledge and skill in the specialist's field.[160] Thus, due to the potential that an auditor would incur relatively higher cost to supervise an auditor's specialist or to evaluate the work of a company's or an auditor's specialist, the auditor may have incentives to forego procedures related to the use of the work of specialists that could be beneficial to investors.

The potential negative impact on audit quality of the auditor's incentives to forgo procedures is compounded by the possibility that an auditor's specialist may perceive little benefit (compared to the corresponding costs and efforts) in fully carrying out their responsibilities, including the objectives of the work to be performed.[161] Alternatively, the specialist may in some instances believe that he or she faces few negative consequences (such as an increase in potential liability) when performing low quality work or, as one commenter on the Proposal asserted, an auditor's specialist may not set forth conclusions anticipated to be rejected by the auditor. However, any such concerns are at least partially alleviated to the extent specialists are subject to codes of conduct, standards, and disciplinary processes of their own profession or could perceive a risk of reputational damage.[162]

The Proposal stated that enhanced performance standards regarding the use of the work of specialists might improve audit quality and benefit investors. One commenter asserted that the Proposal had not articulated a pervasive problem that would be solved by a change in auditing standards. This commenter further stated that it was not persuaded

Bond Law Review 1, 5 (2006) (An ''audit is a credence service in that its quality may never be discovered by the company, the shareholders or other users of the financial statements. It may only come into question if a 'clean' audit report is followed by the collapse of the company.'').

[157] Additionally, such situations may occur because the auditor made an error in judgment assessing the audit risk involved when using the work of an auditor's specialist or a company's specialist. In situations in which ''objectives and the actions needed to achieve them are complex and multifaceted, it is inevitable that different people . . . will . . . interpret . . . them in different ways . . .'' *See* John Hendry, *The Principal's Other Problems: Honest Incompetence and the Specification of Objectives,* 27 Academy of Management Review 98, 107–108 (2002). When people are choosing their actions in such situations, Hendry argues that the predicted actions (and hence resulting problems) are more or less the same, whether one assumes that they are unselfish yet ''prone to mak[ing] mistakes,'' or instead are self-interested and opportunistic yet unlikely to make mistakes. *Id. at* 100.

[158] The degree of responsiveness of the auditor to investor interests, such as increasing audit effort in some circumstances when using the work of specialists, may also be related to, among other things, the auditor's ability to pass on cost increases to companies (and, ultimately, to investors) in the form of higher audit fees. *See infra* note 175 for a further discussion of cost pass-through.

[159] For example, as further discussed in section C, some commenters on the Proposal expressed concern that the auditor may have limited access to proprietary information used by a company's specialist or an auditor-engaged specialist (as compared with information used by an auditor-employed specialist). The final amendments do not require the auditor to obtain such proprietary information, but instead to obtain sufficient information to assess whether the model is in conformity with the applicable financial reporting framework.

[160] *See, e.g.,* Griffith, *Auditors, Specialists, and Professional Jurisdiction in Audits of Fair Values* 23 (''[Results] show[ ] that many auditors review specialists' work for general understanding and sufficiency of the work performed, rather than reviewing in detail as they would in other areas of the audit. They approach the review this way because they cannot fully understand specialists' work.'').

[161] To the extent that an auditor's specialist has a stronger relationship with the auditor (*e.g.,* repeated business interactions between the specialist and the auditor), the potential for moral hazard arising in the context of the auditor using such an auditor's specialist could be higher. However, a stronger relationship between the auditor and the auditor's specialist may also result in the specialist's work being more commensurate with the risk of material misstatement associated with the financial statement assertion and, therefore, improve audit quality.

[162] *See, e.g.,* Letter from American Academy of Actuaries (Aug. 29, 2017), at 1–2, available on the Board's website in Docket 044 (stating that the Academy's members ''are subject to a code of professional conduct, standards of qualification and practice, and a disciplinary process'' and that ''our profession has a specific standard that defines appropriate practice for actuaries during the course of an audit'').

that a change in the audit framework for the auditor's use of specialists was necessary, based on its view that a significant amount of audit work is currently being performed. The Board believes, however, that the changes in the final amendments described in section C are needed (and preferable to other policy-making approaches) [163] because market forces alone cannot mitigate the moral hazard problem described above.

Strengthening the requirements for evaluating the work of a company's specialist, as well as applying a risk-based supervisory approach when using the work of both auditor-employed and auditor-engaged specialists, will prompt auditors to plan and perform audit procedures commensurate with the risk of material misstatement inherent in the specialist's work, and thereby mitigate the moral hazard problem. The final amendments direct more audit attention and effort, when using the work of specialists, to areas where the specialist's work is more significant to the auditor's conclusion on a financial statement assertion and the risk of material misstatement is higher.

Specifically, as discussed in section C, the final amendments mitigate the moral hazard problem by linking the auditor's responsibilities for determining the necessary evidence when evaluating the work of the company's specialist, including the data, significant assumptions, and methods used by the specialist, to four factors: The risk of material misstatement of the relevant assertion; the significance of the specialist's work to the auditor's conclusion regarding that assertion; the level of knowledge, skill, and ability of the specialist; and the ability of the company to significantly affect the specialist's judgments about the work performed, conclusions, or findings.

Further, the final amendments mitigate the moral hazard problem in the context of the use of the work of an auditor's specialists by clarifying the auditor's supervisory responsibilities over auditor-employed specialists and establishing parallel requirements when auditors use the work of auditor-engaged specialists, as discussed in section C. In addition, the necessary extent of supervision under the final amendments depends on factors similar to those that govern the necessary auditor effort in evaluating the work of a company's specialist.

[163] *See* below for a discussion of why the Board believes that standard setting is preferable to other policy-making approaches.

Economic Impacts

The magnitude of the benefits and costs of the final amendments will be affected by the nature of and risks involved in the work performed by specialists, because more complex work and work in areas of greater risk will likely require greater audit effort, holding all else constant. In addition, benefits and costs are likely to be affected by the degree to which auditors have already adopted audit practices and methodologies that are similar to those that the final amendments will require.[164]

The remainder of this subsection discusses the potential benefits, costs, and unintended consequences that may result from the final amendments the Board is adopting.

Benefits

The requirements in the final amendments are expected to benefit investors and auditors by directing auditors to devote more attention to the work of specialists and enhancing the coordination between auditors and their specialists. This should mitigate the problem of auditor moral hazard discussed in the preceding section and contribute to improved audit quality. The final amendments are intended to accomplish this, and increase the likelihood that auditors will detect material misstatements, through requirements that take into account current auditing practices by some larger audit firms and more strongly align auditors' interests with the interests of investors when auditors use the work of specialists. At the same time, by fostering improved audit quality, the final amendments should increase investors' perception of the credibility of a company's financial statements, and help address uncertainty about audit quality and the potential risks associated with the use of the work of company specialists, auditor-employed specialists, and auditor-engaged specialists.

The Board believes that investors will benefit from the final amendments because the application of the requirements should result in more consistently rigorous practices among auditors when using the work of a company's specialist in their audits, as well as a more consistent approach to the supervision of auditor-employed and auditor-engaged specialists. The current divergence in practices related to the auditor's use of the work of specialists, combined with a lack of information about such divergence, could mean that investors are unable to distinguish the quality of each audit separately, which in turn could lead investors to discount the quality of all audits. Conversely, greater consistency in such practices—such as would be promoted by the final amendments—could mitigate those concerns by both enhancing the quality of less rigorous audits and correcting the inappropriate discounting of more rigorous audits. From an investor's perspective, and as one commenter concurred, the increase in audit quality that should result from the final amendments should contribute to investor protection. Specifically, an increase in audit quality may increase the quality of the information provided in a company's financial statements and decrease the cost of capital for that company,[165] especially if less information is available about the company because it has a shorter financial reporting history.[166]

From a broader capital markets perspective, an increase in the information quality of a company's financial statements because of improved audit quality can increase the efficiency of capital allocation decisions. In other words, an increase in the information quality of companies' financial statements can reduce the non-diversifiable risk to investors and generally should result in investment decisions by investors that more accurately reflect the financial position

[164] Additionally, the new standard and related amendments in the Estimates Release, *supra* note 20, may affect the future prevalence and significance of the use of the work of specialists and, therefore, have an impact on the benefits and costs of the final amendments discussed in this section.

[165] *See, e.g.,* Richard A. Lambert, Christian Leuz, and Robert E. Verrecchia, *Accounting Information, Disclosure, and the Cost of Capital,* 45 Journal of Accounting Research 385, 386–7 (2007) (''[A]ccounting information influences a [company's] cost of capital . . . where higher quality accounting information . . . affects the market participants' assessments of the distribution of future cash flows''); *see also* Randolph P. Beatty, *Auditor Reputation and the Pricing of Initial Public Offerings,* 64 The Accounting Review 693, 696 (1989) (''Since auditing firms that have invested more in reputation capital have greater incentives to reduce application errors, the information disclosed in the accounting reports audited by these firms will be more precise, *ceteris paribus.* This reduction in measurement error will allow uninformed investors to estimate more precisely the distribution of firm value.'').

[166] *See, e.g.,* Jeffrey A. Pittman and Steve Fortin, *Auditor Choice and the Cost of Debt Capital for Newly Public Firms,* 37 Journal of Accounting and Economics 113, 114 (2004) (''[E]ngaging [an audit firm with] a brand name reputation for supplying higher-quality audit that enhances the credibility of financial statements, enables young [companies] to reduce their borrowing costs . . . [O]ur research suggests that the economic value of auditor reputation declines with age as [companies] shift toward exploiting their own reputations to reduce information asymmetry.'').

and operating results of each company.[167]

In addition to the general benefits to investors and the capital markets described above, the final amendments should result in specific benefits to auditors. In particular, the final amendments should lead to improvements in the ability of auditors to supervise auditor-employed and auditor-engaged specialists and evaluate their work, to the extent that auditors devote more attention to the work of auditor-employed and auditor-engaged specialists and enhance the coordination with those specialists. The final amendments with regard to the use of the work of a company's specialist should also lead to improvements in the auditor's understanding of the data, significant assumptions, and methods used by the company's specialist. As auditors are better able to identify and detect potential risks of material misstatement, this may also spur companies and their specialists over time to improve the quality of financial reporting and their work.

The final amendments may also contribute to the aggregate benefits of the auditing standards (*i.e.,* by enhancing auditors' understanding of, and compliance with, other PCAOB auditing standards), in addition to the other improvements in audit quality described above. For example, the final amendments to evaluate the work of a company's specialist should result in some auditors developing a better understanding of the company's accounting estimates in significant financial statement accounts and disclosures. In turn, this may also result in improved communications with audit committees.[168]

The magnitude of the benefits discussed in this section resulting from improved audit quality will likely vary to the extent that current practices are aligned with the final amendments. Based on observations from the Board's oversight activities, most firms would need to enhance their methodologies, but to varying degrees. In general, both the greatest changes and the greatest benefits are likely to occur with auditors that need to enhance their methodologies the most.

Costs

The Board recognizes that the benefits of the final amendments will come at additional costs to auditors and the companies they audit. As with any changes to existing requirements, it is anticipated that there will be one-time costs for auditors associated with updating audit methodologies and tools, preparing new training materials, and conducting training.[169] The final amendments could also give rise to recurring costs in the form of additional time and effort spent on any individual audit engagement by specialists and engagement team members.

The most significant impact of the final amendments on costs for auditors is expected to result from the requirements to evaluate the work of a company's specialist. This area of potential impact was also noted by some commenters on the proposed requirements for testing and evaluating the work of a company's specialist.

Compared with the existing requirements,[170] the auditor will be required under the final amendments to evaluate the significant assumptions used by the company's specialist whenever the specialist's work is used, rather than only in certain circumstances,[171] as well as the methods used by the specialist. In practice, these requirements may result in auditors performing more work or using an auditor's specialist to assist them in evaluating the work of a company's specialist. This may lead to significant changes in practice for some firms, particularly smaller firms that currently do not employ specialists and follow methodologies solely based on existing AS 1210, even though the final amendments do not require the auditor to use the work of an auditor's specialist.

Compared to the Proposal, however, the final amendments clarify the auditor's responsibility when evaluating the work of the company's specialist and, therefore, should further limit any incremental cost to circumstances where increases in audit quality can be reasonably expected. For example, as detailed in section C, the final amendments reflect changes to the Proposal relating to the auditor's evaluation of the data, significant assumptions, and methods used by the company's specialist. These revisions clarify that the focus of the auditor's evaluation does not require reperforming the specialist's work. Instead, the auditor's responsibility is to evaluate whether the specialist's work provides sufficient appropriate evidence to support a conclusion regarding whether the corresponding accounts or disclosures in the financial statements are in conformity with the applicable financial reporting framework.

In addition, some of the expected cost increases for auditors due to the final amendments are likely to be offset by the implementation of more risk-based audit approaches in practice (*e.g.,* more targeted procedures when using the work of specialists). More risk-based audit approaches reduce the risk to the auditor of failing to detect material misstatement and thus could lead to a reduction in costs resulting from potential liability or reputational loss faced by auditors.

The final amendments' impact on costs for auditors could also vary based on the size and complexity of an audit engagement. Holding all else constant, anticipated costs generally would be higher for larger, more complex audits than for smaller, less complex audits.[172] As discussed above, a smaller portion of audits performed by smaller audit firms tend to involve use of the work of specialists, compared with audits performed by larger audit firms. Accordingly, it is reasonable to infer that relatively fewer audits of smaller firms will be impacted by the final amendments than audits of larger firms.

The impact of the final amendments would also likely vary, however, depending on the extent to which elements of the final amendments have already been incorporated in an audit

[167] *See, e.g.,* Lambert et al., *Accounting Information, Disclosure, and the Cost of Capital* 388 (finding that information quality directly influences a company's cost of capital and that improvements in information quality by individual companies unambiguously affect their non-diversifiable risks.); Ahsan Habib, *Information Risk and the Cost of Capital: Review of the Empirical Literature,* 25 Journal of Accounting Literature 127, 128 (2006) (''A commitment to increased level [and quality] of disclosure reduces the possibility of information asymmetries and hence should lead to a lower cost of capital effect. . . . In addition, high quality auditing . . . could provide credible information in the market regarding the future prospect of the [company] and hence could reduce the cost of capital in general, and cost of equity capital in particular.'' (footnote omitted)).

[168] *See* paragraphs .12c and .13c of AS 1301, *Communications with Audit Committees,* for the auditor's communication requirements related to the company's critical accounting estimates.

[169] The PCAOB has observed that larger firms are likely to update their methodologies using internal resources, whereas smaller firms are more likely to purchase updated methodologies from external vendors.

[170] *See* existing AS 1210.12.

[171] In circumstances when an auditor is auditing fair value measurements and disclosures in accordance with AS 2502, footnote 2 of that standard provides that management's assumptions include assumptions developed by a specialist engaged or employed by management. Therefore, the auditor is currently required to evaluate the reasonableness of significant assumptions developed by the company's specialist when auditing a fair value measurements and disclosures.

[172] *See* Letter from American Academy of Actuaries (July 31, 2015), at 18, available on the Board's website in Docket 044 (stating that ''smaller audit firms also tend to have clients that require fewer special needs'' and thus implying that audit engagements of smaller audit firms tend to be less complex than audit engagements of larger audit firms).

firm's methodologies or applied in practice by individual engagement teams. For auditors that have already implemented elements of the final amendments, the costs of implementing the final amendments will be lower than for firms that currently perform more limited audit procedures. For example, some firms employ procedures to reach and document their understanding with an auditor's specialist about, among other things, the responsibilities of the auditor's specialist and the nature of the work to be performed. Firms that do not already employ such procedures may incur additional costs under the final amendments.

Similarly, the incremental impact of the final amendments on costs incurred by auditors would likely vary depending on, among other things, how many of an audit firm's engagements involve the use of the work of specialists. Among audit firms that use the work of specialists on their engagements, the anticipated costs would likely be higher for those firms that use the work of specialists more frequently or extensively than for firms that do so less frequently or extensively. Larger audit firms generally perform a larger number of audit engagements, however, and the incremental impact of the final amendments on their costs per engagement should be lower than for smaller firms that generally perform a smaller number of audit engagements. This would be the case regardless of whether the audit engagements of the larger and smaller firms involve the use of the work of specialists, since larger firms, due to their existing economies of scale [173] and scope,[174] would tend to be able to distribute the overall cost impact of the final amendments over a larger number of audit engagements.

Some commenters argued that the Proposal could lead, in some instances, to significant (and potentially pervasive) increases in auditing costs, due to increased audit effort that would not necessarily be accompanied by corresponding increases in audit quality. In contrast, one commenter asserted that the requirements could be implemented effectively with minimal costs. In adopting the final amendments, the Board modified certain of the proposed amendments with the intent that the final amendments be risk-based and scalable, and that any cost increases be accompanied by commensurate improvements in audit quality. For example, as discussed earlier in this subsection, the final amendments reflect changes to the Proposal relating to the auditor's evaluation of the data, significant assumptions, and methods used by the company's specialist. These changes clarify that the focus of the auditor's evaluation does not require reperforming the specialist's work and thus should limit incremental costs to situations where more auditor involvement is necessary to address the identified risk of material misstatement.

The final amendments might result in additional costs for some companies, compared to costs incurred under current requirements, to the extent that the final amendments lead auditors to raise their audit fees.[175] Such additional costs could vary for the same reasons as described above relating to the final amendments' potential impact on costs incurred by auditors. The final amendments could also give rise to new recurring costs for management, to the extent that the final amendments result in the need for companies to devote more time and resources to respond to auditor inquiries and requests. Some commenters on the Proposal expressed concern about the potential cost to companies, including smaller companies. For example, one commenter suggested that companies might need to provide more support for their discount rate assumptions under the proposed amendments. On the other hand, another commenter suggested that, in the context of the size of the U.S. fixed income market, consistent use of methodologies compliant with fair value accounting requirements by companies would be a small cost to bear.

For many companies (and, indirectly, investors), however, the final amendments should not result in significant additional costs or significantly increased audit fees, particularly recurring costs, as their auditors, especially if they are larger audit firms, may have already incorporated many or all elements of the final amendments into their audit methodologies, and individual engagement teams may already be applying many or all of the final amendments in practice. In addition, the changes from the Proposal reflected in the final amendments, which clarify the auditor's responsibility when evaluating the work of the company's specialist, should mitigate some of the potential additional costs suggested by commenters.

Unintended Consequences

In addition to the benefits and costs discussed above, the final amendments could have unintended economic impacts, the possibility of which the Board has taken into account in adopting the final amendments. The discussion below describes the potential unintended consequences that were identified in the Proposal or by commenters, as well as the Board's consideration of such consequences in adopting the final amendments. The discussion also addresses, where applicable, factors that mitigate the potential negative consequences, including revisions to the proposed amendments reflected in the final amendments and the existence of other countervailing factors.

Potential Adverse Impact on the Ability of Smaller Firms To Provide Audit Services

In instances where the final amendments would increase the need of some audit firms to use the work of an auditor's specialist (rather than only use the work of a company's specialist under existing AS 1210), the final amendments might result in some smaller firms accepting fewer audit engagements that would require the use

[173] *See Economies of Scale and Scope,* The Economist, Oct. 20, 2008 (available at *https://www.economist.com/news/2008/10/20/economies-of-scale-and-scope*) (''Economies of scale are factors that cause the average cost of producing something to fall as the volume of its output [*i.e.,* number of audit engagements] increases.''). In this context, the average cost would likely fall with the number of audit engagements, because certain costs, such as the cost of employing specialists, are not directly related to the number of audit engagements that an auditor assumes. *See also* Simon Yu Kit Fung, Ferdinand A. Gul, and Jagan Krishnan, *City-Level Auditor Industry Specialization, Economies of Scale, and Audit Pricing* 87 The Accounting Review 1281, 1287 (2012) (''For an audit firm, the scale economies can arise from substantial investment in general audit technology (*e.g.,* audit software development or hardware acquisition) and human capital development (*e.g.,* staff training), which are likely to be shared among all of their clients. Once these investments are in place, additional clients can be serviced at a lower marginal cost than the cost of servicing the first few clients.'').

[174] *See Economies of Scale and Scope,* The Economist (''[E]conomies of scope [are] factors that make it cheaper to produce a range of products together than to produce each one of them on its own. Such economies can come from businesses sharing centralised functions . . .'').

[175] It is not clear to what extent the final amendments will result in higher audit fees. The Board is aware of public reports that have analyzed historical and aggregate data on audit fees and suggest that audit fees generally have remained stable in recent years, notwithstanding the fact that the Board and other auditing standard setters have issued new standards and amended other standards during that period. *See, e.g.,* Audit Analytics, *Audit Fees and Non-Audit Fees: A Fifteen Year Trend* (Dec. 2017). For a general discussion of cost pass-through, *see, e.g.,* James Bierstaker, Rich Houston, Arnold Wright, *The Impact of Competition on Audit Planning, Review, and Performance,* 25 Journal of Accounting Literature 1, 12 (2006) (summarizing research on the market for audit services and finding ''there is evidence of lower fee premiums when clients switch auditors, suggesting that auditors are less able to pass on the increased costs associated with new audits in a more competitive environment''); and RBB Economics, *Brief 48: The Price Effect of Cost Changes: Passing Through and Here to Stay* 1, 3 (Dec. 2014).

of an auditor's specialist. Relatedly, in such instances, some smaller firms might be inhibited from expanding their audit services for similar reasons. The Board had acknowledged the possibility of such unintended consequences in the Proposal, and some commenters also expressed the view that the proposed amendments might adversely impact the ability of smaller firms to provide audit services in certain situations.

In particular, to the extent that auditors at smaller audit firms have less experience evaluating the work of a company's specialist than auditors at larger firms, some auditors may have an increased need to use the work of an auditor's specialist for certain engagements. Potentially, such firms would be unable to take advantage of the economies of scale and scope available to larger firms (for example, if they did not employ their own specialists and had to identify and engage qualified specialists), and find it economically less attractive to accept such engagements. In addition, some commenters on the Proposal suggested more broadly that the ability of smaller firms to compete in the audit services market would be adversely affected. The Board acknowledges that the final amendments could have a more significant impact on smaller firms than on larger firms. However, the Board believes that two factors will lessen any such adverse impact of the final amendments on smaller firms.

First, as described earlier in this section, the evidence from PCAOB inspections data indicates that smaller audit firms generally have comparatively few audit engagements in which they use the work of a company's specialist or an auditor's specialist. For example, the results for smaller audit firms in Figure 5 above indicate that the auditors did not use the work of either a company's specialist or an auditor's specialist in 81% and 94% of the audits of smaller audit firms—U.S. and non-U.S. firms, respectively—inspected in 2017, and that the auditors used the work of a company's specialist without also using the work of an auditor's specialist [176] in only 10% and 6% of the audits of smaller audit firms—U.S. and non-U.S. firms, respectively—inspected in 2017.[177] These results suggest that the number of engagements where smaller firms might be faced with using an auditor's specialist for the first time to evaluate the work of a company's specialist under the final amendments is a relatively small proportion of audits subject to the Board's standards.

Second, there is some evidence that smaller and larger audit firms do not directly compete with one another in some segments of the audit market.[178] To the extent smaller audit firms compete in different segments of the audit market than larger audit firms, the competitive impact of the final amendments on smaller firms would be lessened.

Taking into consideration the factors described above, the final amendments further mitigate the potential adverse impact on the ability of smaller firms to provide audit services involving, or compete for audit engagements that require, the use of the work of specialists. For example, the clarifications in the final amendments for evaluating the work of a company's specialist, such as limiting the use of the term ''test'' to procedures applied to company-produced information used by the specialist, should alleviate concerns expressed by certain commenters on the Proposal that auditors would be required to reperform the work of a company's specialist. In addition, under the final amendments, auditors are allowed to assess the objectivity of an auditor-engaged specialist along a spectrum, rather than make a binary determination whether they can use the work of an auditor-engaged specialist.[179]

Potential Diversion of Auditor Attention From Other Tasks That Warrant Attention

In some audit engagements involving specialists, the final amendments might lead auditors to devote more of their attention and resources to the work of a company's specialists (including the related training of audit personnel) and to enhancing the coordination with an auditor's specialists, and less time and resources to other tasks that warrant greater attention.

The potential impact on overall audit quality might vary as the re-orientation of attention would occur in different ways for each audit engagement. Any potential adverse impact on overall audit quality is mitigated, however, by the risk-based approach in the final amendments to using the work of specialists. To the extent that the re-orientation of the auditor's attention leads to more effort in areas with the greatest risk of material misstatement to the financial statements, overall audit quality would be expected to increase. Furthermore, if auditors devote more attention to the work of specialists and enhancing the coordination with their specialists, the final amendments will result in some auditors acquiring greater expertise, which could positively affect the quality of audit work performed by such auditors. Such auditor specialization could lead some audit firms to seek fewer audit engagements involving specialists, while other firms might seek more such engagements. In such a market, the competitive effects of increased specialization would likely be highly dependent on the circumstances.

Potential for Unnecessary Effort by the Auditor or the Auditor's Specialist

Under the final amendments, the potential exists that auditors might interpret the final requirements to suggest that they should use the work of an auditor's specialist in situations where the auditor had already obtained sufficient appropriate evidence with respect to a relevant assertion of a significant account or disclosure. The Proposal also identified this potential consequence, and some commenters expressed concern that auditors might feel compelled to do more work than was necessary or optimal under the proposed requirements. This unintended consequence might also arise under the final amendments if an auditor had already evaluated the work of a company's specialist, but decided to employ or engage its own specialist to perform additional procedures. For example, the auditor might ask an auditor's specialist to develop or assist in developing an independent expectation of an estimate in order to further demonstrate his or her diligence or err on the side of caution. In some instances, it is possible that the auditor might do so even though the auditor believes the costs of using the work of an auditor's specialist will outweigh the expected benefits in terms of audit quality.

The final amendments, however, mitigate this risk in several respects. In particular, the final amendments do not require the auditor to use the work of an

[176] The fact that the auditor did not use the work of an auditor's specialist does not imply that the auditor should have used the work of an auditor's specialist.

[177] Furthermore, given that the engagements selected for inspection are on average more likely to be complex (and thus more likely to involve the use of the work of a specialist) than the overall population of audit engagements of smaller audit firms, the percentage results shown above for audits involving the use of the work of specialists are likely greater than the actual percentage of the overall population of audit engagements of smaller audit firms.

[178] *See, e.g.,* GAO Report No. GAO–03–864, *Public Accounting Firms: Mandated Study on Consolidation and Competition* (July 2003).

[179] Similarly, the final amendments recognize that a company's ability to significantly affect the judgments of a company's specialist may vary and provide for the auditor to evaluate along a spectrum the company's ability to significantly affect those judgments.

auditor's specialist. Moreover, the final amendments regarding the nature, timing, and extent of the evaluation of the work of the company's specialist are designed to be risk-based and scalable to companies of varying size and complexity. In addition, as discussed above, the final amendments clarify the requirements for evaluating the work of a company's specialist and assessing the objectivity of an auditor-engaged specialist, which should avoid unnecessary effort by the auditor or auditor's specialist. Accordingly, any increases in effort should be accompanied by improvements in audit quality.

Potential Shift in the Balance Between the Work of a Company's Specialist and the Work of an Auditor's Specialist

In audit engagements involving specialists, the potential exists that the final amendments could affect the balance between the work of a company's specialist and the work of an auditor's specialist. The Proposal also identified this potential consequence, and some commenters expressed concern that companies might, in some instances, choose not to engage or involve a company's specialist if they expected that the auditor would use an auditor's specialist to perform additional procedures.[180]

The final amendments do not change management's responsibility for the financial statements or their obligation to maintain effective internal control over financial reporting. Anticipating the use of an auditor's specialist for the audit engagement, however, some issuers may decide to use a company's specialist to a lesser extent (or not at all) when preparing financial statements and some company specialists may exhibit a reduced sense of responsibility. In such instances, the auditor's specialist may have to perform more work in order to adequately evaluate potential audit evidence provided by the issuer, including the work of a company's specialist if the issuer continues to use such a specialist. Alternatively the auditor may decide not to use the work of a company's specialist or use that work to a lesser extent. If the situations described above were to occur, audit quality might be reduced, not enhanced, in some instances.

The change in the balance between the work of a company's specialist and the work of an auditor's specialist, however, would likely be limited, as companies control the work of a company's specialist over information to be used in the financial statements, but lack similar control over an auditor's specialist. Companies generally are likely, therefore, to prefer to continue their use of a company's specialist. In addition, the final amendments do not require auditors to use an auditor's specialist when using the work of a company's specialist. Moreover, compared to the Proposal, the final amendments clarify the requirements for evaluating the work of a company's specialist. For example, the final amendments clarify the auditor's responsibilities for evaluating the methods and significant assumptions used by the company's specialist, and limit the use of the term ''test'' to procedures applied to company-produced information used by the specialist. These clarifications should alleviate concerns expressed by certain commenters.

Potential Reduction in the Availability of Specialists

Some commenters on the Proposal suggested that the proposed amendments, if adopted, would not affect the pool of qualified specialists available to serve as auditors' specialists. Other commenters, however, expressed concern that the proposed amendments might result in a shortage of, or strains on, the pool of qualified auditors' specialists, especially in situations where an audit firm currently uses the work of a company's specialist, but does not concurrently use an auditor's specialist.[181] Situations that involved the auditor's use of the work of a company's specialist, but did not concurrently involve the use of an auditor's specialist, comprised a small percentage of audit engagements, ranging from 6% to 10% of the audit engagements of smaller and larger audit firms—U.S. and non-U.S.—that were selected for inspection in 2017 (category (1) of Figure 5 above).

Similar to the proposed amendments, the final amendments do not require auditors to use an auditor's specialist when using the work of a company's specialist. Moreover, in comparison to the proposed amendments, auditors are allowed under the final amendments to assess the objectivity of an auditor-engaged specialist along a spectrum, rather than make a binary determination whether they can use the work of an auditor-engaged specialist.[182] This change should also reduce the possibility of a shortage of qualified auditors' specialists. Accordingly, the Board believes that the final amendments should not result in a shortage of, or strains on, the pool of qualified specialists available to serve as auditors' specialists.

Alternatives Considered, Including Key Policy Choices

The development of the final amendments involved considering a number of alternative approaches to address the problems described above. This subsection explains: (1) Why standard setting is preferable to other policy-making approaches, such as providing interpretive guidance or enhancing inspection or enforcement efforts; (2) other standard-setting approaches that were considered by the Board; and (3) key policy choices made in determining the details of the proposed standard-setting approach.

Why Standard Setting Is Preferable to Other Policy-Making Approaches

The Board's policy tools include alternatives to standard setting, such as issuing additional interpretive guidance or an increased focus on inspections or enforcement of existing standards. One commenter stated that the Board should be proactive and supported the Board's preference for standard setting over other policy tools, while other commenters noted that other policy tools, such as the issuance of staff guidance and inspections activity, should also be considered.

While other policy tools may complement auditing standards, the Board has determined that providing additional guidance or increasing its inspection or enforcement efforts, without also amending the existing requirements regarding the auditor's responsibilities for using the work of specialists, would not be effective corrective mechanisms to address concerns with the evaluation of the work of a company's specialist, the

[180] *See, e.g.,* Letter from Duff & Phelps (Aug. 30, 2017), at 4, available on the Board's website in Docket 044 (''situations may arise where management may feel compelled to invest less time, costs and effort in supporting certain assertions in the financial statements by not engaging a specialist when one would otherwise be called for—especially given the expectation that the auditor's specialist would perform extensive testing and calculations as part of the audit'').

[181] Commenters did not specify whether such shortages would be permanent, or instead would reflect a temporary disruption to which the market would adjust over time.

[182] Additionally, the final amendments provide for the auditor to evaluate along a spectrum the company's ability to significantly affect the judgments of the company's specialist. Furthermore, as discussed above, the final amendments reflect changes to the Proposal relating to the evaluation of the data, significant assumptions, and methods used by the company's specialist that clarify that the focus of the auditor's evaluation does not require the auditor to reperform the specialist's work.

supervision of an auditor's specialists, and the sources of market failure discussed previously. In addition, while devoting additional resources to such activities might focus auditors' attention on existing requirements, it would not provide the benefits associated with improving the standards discussed above. Thus, the final approach reflects the conclusion that standard setting is needed to fully achieve the benefits resulting from improvement in audits involving specialists. The Board will, however, monitor the implementation of the final amendments by audit firms and, if appropriate, consider the need for additional guidance.

Other Standard-Setting Alternatives Considered

Several alternative standard-setting approaches were also considered, including: (1) Retaining the existing framework but requiring the auditor to disclose when the auditor used the work of specialists in the audit; or (2) targeted amendments to existing requirements.

Disclosing When the Work of a Specialist Is Used

As an alternative to amending AS 1105 and AS 1201 and replacing existing AS 1210 in its entirety, the Board considered amending existing AS 1210 to remove the current limitations in existing AS 1210.15 on disclosing that a specialist was involved in the audit. Under this approach, the auditor would have been required to disclose this fact. Investors might benefit from such a requirement, since it would inform investors, at a minimum, that the auditor had evaluated the need for specialized skill or knowledge in order to perform an audit in accordance with PCAOB standards. Such disclosures could, in theory, positively affect audit practice, as auditors might face more scrutiny from investors regarding their decisions whether or not to use specialists.

Disclosure alone, however, would be unlikely to achieve the Board's objectives, which includes effecting more consistently rigorous practices among auditors when using the work of a company's specialist in their audits, as well as effecting a more consistent approach to the supervision of auditor-employed and auditor-engaged specialists. For example, with disclosure alone, some auditors might not evaluate the significant assumptions and methods of a company's specialist, even in higher risk audit areas.

Moreover, in a separate rulemaking, the Board has adopted a new auditing standard that requires the auditor to communicate CAMs in the auditor's report. A CAM is defined as any matter arising from the audit of the financial statements that was communicated or required to be communicated to the audit committee and that relates to accounts or disclosures that were material to the financial statements and involved especially challenging, subjective, or complex auditor judgment.[183] Depending on the circumstances, the description of such CAMs might include a discussion of the work or findings of a specialist. While it is not yet clear how frequently the use of the work of specialists will be disclosed in the auditor's report as part of CAMs, these disclosure requirements are complemented by amending AS 1105 and AS 1201 and replacing existing AS 1210 to improve performance requirements over the use of the work of specialists. As discussed above, this should directly mitigate auditor moral hazard and change certain elements of audit practice observed by PCAOB oversight activities that have given rise to concern, such as situations where auditors did not apply appropriate professional skepticism when using the work of specialists.

Targeted Amendments to Existing Requirements for Using the Work of an Auditor's Specialists

The Board considered, but is not adopting, two alternative approaches for an auditor's use of the work of an auditor's specialist, as discussed in further detail in the Proposal. The first alternative was to develop a separate standard for using the work of an auditor's specialist. This approach would have created a new auditing standard for using the work of an auditor's specialist, whether employed or engaged by the auditor, similar to the approach in ISA 620 and AU–C Section 620 (and thereby separating the requirements for using the work of an auditor-engaged specialist from those for using the work of a company's specialist). One commenter on the Proposal supported this approach. The second alternative was to extend the supervisory requirements in AS 1201 to an auditor-engaged specialist. This approach would have amended existing AS 1210 to remove all references to an auditor-engaged specialist and amended AS 1201 to include all arrangements involving auditor-employed and auditor-engaged specialists.

Given the similar role of an auditor-employed and an auditor-engaged specialist in the audit, the Board determined that the auditor's procedures for reaching an understanding with the specialist and evaluating the work to be performed by the specialist should be similar. Accordingly, the Board has adopted separate, but parallel, requirements for using the work of an auditor-employed specialist and an auditor-engaged specialist related to reaching an understanding and evaluating the work to be performed. However, as discussed above, the auditor's relationship to an auditor-employed specialist differs in certain respects from the auditor's relationship to an auditor-engaged specialist, which may affect the auditor's visibility into the specialist's knowledge, skill, and ability, as well as into any relationships that might affect the specialist's independence or objectivity. Accordingly, the final amendments address these differences by requiring the auditor to perform procedures in AS 1210, as amended, to evaluate the knowledge, skill, ability, and objectivity of auditor-engaged specialists, while recognizing that the auditor evaluates the knowledge, skill, ability, and independence of auditor-employed specialists in accordance with the same requirements that apply to other engagement team members.

Key Policy Choices

Given the preference for creating separate requirements for using a company's specialist, an auditor-employed specialist, and an auditor-engaged specialist, the Board considered different approaches to addressing key policy issues.

Scope of the Final Amendments

The Board considered a variety of possible approaches to the scope of the final amendments, including the treatment of persons with specialized skill or knowledge in certain areas of IT and income taxes. *See* section C for a discussion of the Board's considerations. In particular, after considering comments on the Proposal, the Board has clarified the scope and application of the final amendments in the rule text and discussion in its adopting release. The Board, while mindful of advances in technology that could fundamentally impact the audit process (and hence what is understood to be skill and knowledge in specialized areas of accounting and auditing), believes that the final amendments are sufficiently principles-based and flexible to accommodate continued technological advances that could impact audit practice in the future.

[183] *See The Auditor's Report on an Audit of Financial Statements When the Auditor Expresses an Unqualified Opinion and Related Amendments to PCAOB Standards,* PCAOB Release No. 2017–001 (June 1, 2017).

Evaluating the Work of a Company's Specialist

The Board considered a variety of possible approaches relating to the auditor's evaluation of the work of a company's specialist. *See* section C for a discussion of the Board's considerations. In particular, after considering the comments on the Proposal, the Board is retaining the fundamental approach in the Proposal, under which the auditor evaluates the data, significant assumptions, and methods used by the specialist. The final amendments, including the revisions to the proposed requirements described in section C, retain the benefits resulting from the use of a risk-based audit approach, while at the same time directing the auditor to consider the quality of the source of information when determining his or her audit approach.

Evaluating the Qualifications and Independence of the Auditor-Employed Specialist

The Board considered a variety of possible approaches to evaluating the knowledge, skill, ability, and independence of auditor-employed specialists. *See* section C for a discussion of the Board's considerations. In particular, after considering the comments on the Proposal, the Board eliminated from the final amendments certain paragraphs that could have been misinterpreted as suggesting a different process for evaluating the qualifications and independence of auditor-employed specialists than for other engagement team members. Instead, the final amendments acknowledge that an auditor-employed specialist is a member of the engagement team and that existing requirements for assessing the qualifications and independence of engagement team members apply equally to auditor-employed specialists.

Assessing the Qualifications and Objectivity of the Auditor-Engaged Specialist

The Board considered a variety of possible approaches to assessing the knowledge, skill, ability, and objectivity of auditor-engaged specialists. *See* section C for a discussion of the Board's considerations. In particular, after considering the comments, the Board made revisions in adopting the requirements described in section C to allow auditors to assess the objectivity of auditor-engaged specialists along a spectrum, rather than make a binary determination. The Board believes the final amendments in this area should limit any incremental cost to circumstances where increases in audit quality can be reasonably expected and thereby mitigate any adverse economic impact from potential unintended consequences of the final amendments. For example, requiring the auditor to perform additional procedures to evaluate the data, significant assumptions, and methods used by the specialist when the specialist has a relationship with the company that affects the specialist's objectivity should increase audit quality and reduce the risk that a material misstatement could go undetected.

Special Considerations for Audits of Emerging Growth Companies

Pursuant to Section 104 of the Jumpstart Our Business Startups (''JOBS'') Act, rules adopted by the Board subsequent to April 5, 2012, generally do not apply to the audits of EGCs, unless the SEC ''determines that the application of such additional requirements is necessary or appropriate in the public interest, after considering the protection of investors, and whether the action will promote efficiency, competition, and capital formation.'' [184] As a result of the JOBS Act, the rules and related amendments to PCAOB standards the Board adopts are generally subject to a separate determination by the SEC regarding their applicability to audits of EGCs.

The Proposal sought comment on the applicability of the proposed requirements to audits of EGCs. Commenters generally supported applying the proposed requirements to audits of EGCs. These commenters asserted that consistent requirements should apply for similar situations encountered in any audit of a company, whether that company is an EGC or not, as well as that the benefits described in the Proposal would be applicable to EGCs. One commenter suggested ''phasing'' the implementation of the requirements for such audits to reduce the compliance burden.

The Board also notes that any new PCAOB standards and amendments to existing standards determined not to apply to the audits of EGCs would require auditors to address the differing requirements within their methodologies, which would also create the potential for confusion.

To inform consideration of the application of auditing standards to audits of EGCs, the PCAOB staff has also published a white paper that provides general information about characteristics of EGCs.[185] As of the November 15, 2017 measurement date, the PCAOB staff identified 1,946 companies that had identified themselves as EGCs in at least one SEC filing since 2012 and had filed audited financial statements with the SEC in the 18 months preceding the measurement date.

Overall, the discussion of benefits, costs, and unintended consequences above is generally applicable to audits of EGCs. EGCs generally tend to have shorter financial reporting histories than other exchange-listed companies. As a result, there is less information available to investors regarding such companies relative to the broader population of public companies.[186]

Although the degree of information asymmetry between investors and company management for a particular issuer is unobservable, researchers have developed a number of proxies that are thought to be correlated with information asymmetry, including small issuer size, lower analyst coverage, larger insider holdings, and higher research and development costs.[187] To the extent that EGCs exhibit one or more of these properties, there may be a greater degree of information asymmetry for EGCs than for the broader population of companies, which increases the importance to investors of the external audit to enhance the credibility of management disclosures.[188] The final amendments

[184] *See* Public Law 112–106 (Apr. 5, 2012). *See* Section 103(a)(3)(C) of the Sarbanes-Oxley Act, as added by Section 104 of the JOBS Act. Section 104 of the JOBS Act also provides that any rules of the Board requiring (1) mandatory audit firm rotation or (2) a supplement to the auditor's report in which the auditor would be required to provide additional information about the audit and the financial statements of the issuer (auditor discussion and analysis) shall not apply to an audit of an EGC. The final amendments do not fall within either of these two categories.

[185] *See* PCAOB white paper, *Characteristics of Emerging Growth Companies as of November 15, 2017* (Oct. 11, 2018) (''EGC White Paper''), available on the Board's website.

[186] *Id.*

[187] *See, e.g.,* David Aboody and Baruch Lev, *Information Asymmetry, R&D, and Insider Gains,* 55 Journal of Finance 2747 (2002); Michael J. Brennan and Avanidhar Subrahmanyam, *Investment Analysis and Price Formation in Securities Markets,* 38 Journal of Financial Economics 361 (1995); Varadarajan V. Chari, Ravi Jagannathan, and Aharon R. Ofer, *Seasonalities in Security Returns: The Case of Earnings Announcements,* 21 Journal of Financial Economics 101 (1988); and Raymond Chiang, and P. C. Venkatesh, *Insider Holdings and Perceptions of Information Asymmetry: A Note,* 43 Journal of Finance 1041 (1988).

[188] *See, e.g.,* Molly Mercer, *How Do Investors Assess the Credibility of Management Disclosures?,* 18 Accounting Horizons 185, 189 (2004) (''[Academic studies] provide archival evidence that external assurance from auditors increases disclosure credibility. . .These archival studies

Continued

relating to the auditor's use of the work of specialists, which are intended to enhance audit quality, could contribute to an increase in the credibility of financial statement disclosures by EGCs.

When confronted with information asymmetry, investors may require a larger risk premium, and thus increase the cost of capital to companies.[189] Reducing information asymmetry, therefore, can lower the cost of capital to companies, including EGCs, by decreasing the risk premium required by investors.[190]

Furthermore, an analysis by PCAOB staff, the results of which are summarized in Figure 6 below, suggests that the prevalence and significance of the use of the work of specialists in audits of EGCs is comparable to the prevalence and significance of the use of the work of specialists in audits of non-EGCs, for audit engagements by both smaller audit firms and larger audit firms.[191]

FIGURE 6—AUDITS PERFORMED BY U.S. AND NON-U.S. AUDIT FIRMS OF EGCS THAT WERE SELECTED FOR INSPECTION BY THE PCAOB IN 2017, CATEGORIZED BY USE OF THE WORK OF SPECIALISTS

	% (number) of audits by larger audit firms (U.S.)	% (number) of audits by smaller audit firms (U.S.)	% (number) of audits by larger audit firms (non-U.S.)	% (number) of audits by smaller audit firms (non-U.S.)
(1) auditor used the work of a *company's specialist* but did not use the work of an *auditor's specialist*	0% (0)	9% (3)	11% (1)	13% (1)
(2) auditor used the work of an *auditor's specialist* but did not use the work of a *company's specialist*	8% (2)	0% (0)	22% (2)	0% (0)
(3) auditor used the work of both a *company's specialist* and an *auditor's specialist*	29% (7)	12% (4)	22% (2)	0% (0)
(4) auditor neither used the work of a *company's specialist* nor used an *auditor's specialist*[192]	63% (15)	79% (26)	44% (4)	88% (7)
Total[193]	100% (24)	100% (33)	100% (9)	100% (8)

Source: PCAOB

As indicated in Figure 6, the staff analysis observed that 41 (or about 55%) of the audit engagements were performed by U.S. and non-U.S., smaller audit firms. Among those 41 audit engagements, only four (or about 10%) involved the use of the work of a company's specialist but did not concurrently involve the use of the work of an auditor's specialist (category (1) above). In comparison, 33 of the 41 audit engagements (or about 80%) did not involve the use of the work of either a company's specialist or an auditor's specialist (category (4) above) and four of the 41 audit engagements (or about 10%) involved the use of both a company's specialist and an auditor's specialist (category (3) above). In none of those 41 audit engagements did the auditor use the work of an auditor's specialist without also concurrently using the work of a company's specialist (category (2) above). Among the 33 audit engagements of EGCs (or about 45%) performed by larger firms, both U.S. and non-U.S. firms, one (or about 3%) involved the use of the work of a company's specialist but did not concurrently involve the use of the work of an auditor's specialist (category (1) above); 19 (or about 58%) did not involve the use of the work of either a company's specialist or an auditor's specialist (category (4) above); nine (or about 27%) involved the use of both a company's specialist and an auditor's specialist (category (3) above); and four (or about 12%) involved the use of the work of an auditor's specialist, but did not concurrently involve the use of work of a company's specialist (category (2) above).

Thus, the Board believes that the need for the final amendments discussed earlier and the associated benefits of the final amendments generally apply also to audits of EGCs.

While for small companies (including EGCs), even a small increase in audit fees could negatively affect their profitability and competitiveness, many EGCs are expected to experience minimal impact from the final amendments. In particular, some EGCs do not use a company's specialist and, for those EGCs that do use a company's specialist, the final amendments relating to the auditor's use of the work of such specialists are risk-based and designed to be scalable to companies of varying size and complexity.

In addition, the analysis presented in the EGC White Paper observed that about 40% of audits of EGCs are performed by firms that provided audit reports for more than 100 issuers and were required to be inspected on an annual basis by the PCAOB.[194] These firms tend to already have practices for using the work of specialists that are consistent with many or all elements of the final amendments. For such audit firms, the costs on a per engagement basis of adopting the final amendments should also be low, for the reasons discussed above.

For the other 60% of audits of EGCs, the PCAOB staff analysis summarized in Figure 6 above suggests that the proportion of EGC audit engagements that involve the use of the work of company specialists, but do not involve the use of the work of an auditor's specialist, is small and comparable to the proportion of similar issuer audit engagements described previously. As discussed above, auditors on such audit engagements may experience the most significant cost impact of the final amendments. However, only a small proportion of audits of EGCs are expected to be significantly affected by the final amendments. In addition, the final amendments clarify the requirements for evaluating the work of a company's specialist and assessing the objectivity of an auditor-engaged specialist, which should avoid

suggest that bankers believe audits enhance the credibility of financial statements . . .'').

[189] *See supra* notes 165 and 167.

[190] For a discussion of how increasing reliable public information about a company can reduce risk premium, *see* David Easley and Maureen O'Hara, *Information and the Cost of Capital,* 59 The Journal of Finance 1553 (2004).

[191] The staff analysis was based on engagement-level data from the subset of 74 audit engagements of EGCs by U.S. and non-U.S. audit firms that were selected for inspection in 2017 presented above.

[192] The audit engagements not included in the preceding three categories were included in the fourth category.

[193] The total for the values shown in categories (1) through (4) may not add to 100% due to rounding.

[194] *See* EGC White Paper, at 3.

unnecessary effort by the auditor or auditor's specialist. Accordingly, any increase in effort should be accompanied by improvements in audit quality.

The Board has provided this analysis to assist the SEC in its consideration of whether it is ''necessary or appropriate in the public interest, after considering the protection of investors and whether the action will promote efficiency, competition, and capital formation,'' to apply the final amendments to audits of EGCs. This information includes data and analysis of EGCs identified by the Board's staff from public sources.

For the reasons explained above, the Board believes that the final amendments are in the public interest and, after considering the protection of investors and the promotion of efficiency, competition, and capital formation, recommends that the final amendments should apply to audits of EGCs. Accordingly, the Board recommends that the Commission determine that it is necessary or appropriate in the public interest, after considering the protection of investors and whether the action will promote efficiency, competition, and capital formation, to apply the final amendments to audits of EGCs. The Board stands ready to assist the Commission in considering any comments the Commission receives on these matters during the Commission's public comment process.

Applicability to Audits of Brokers and Dealers

The Proposal indicated that the proposed amendments would apply to audits of brokers and dealers, as defined in Sections 110(3)–(4) of the Sarbanes-Oxley Act. The Board solicited comment on any factors specifically related to audits of brokers and dealers that may affect the application of the proposed amendments to those audits. Commenters that addressed the issue agreed that amendments to the standards for the auditor's use of the work of specialists should apply to these audits, citing benefits to users of financial statements of brokers and dealers and the risk of confusion and inconsistency if different methodologies were required under PCAOB standards for audits of different types of entities.

After considering comments, the Board determined that the final amendments, if approved by the SEC, will be applicable to all audits performed pursuant to PCAOB standards, including audits of brokers and dealers. The Board's determination is based on the observation that the information asymmetry between the management of brokers and dealers and their customers about the brokers' and dealers' financial condition may be significant and of particular interest to customers, as a broker or dealer may have custody of customer assets, which could become inaccessible to the customers in the event of the insolvency of the broker or dealer.

In addition, unlike the owners of brokers and dealers, who themselves may be managers and thus be subject to minimal or no information asymmetry, customers of brokers and dealers may, in some instances, be large in number and may not be expert in the management or operation of brokers and dealers. Such information asymmetry between the management and the customers of brokers and dealers makes the role of auditing important to enhance the reliability of financial information.

Accordingly, the discussion above of the need for the final amendments, as well as the costs, benefits, alternatives considered and potential unintended consequences to auditors and the companies they audit, also applies to audits of brokers and dealers. In particular, PCAOB staff analysis of inspections data for audits of brokers and dealers indicates that auditors of brokers and dealers do not frequently use the work of specialists, whether company specialists or an auditor's specialists.[195] Hence, the results suggest that only a small percentage of audits of brokers and dealers will be impacted by the final amendments. In addition, with respect to the impact of the final amendments on customers of brokers and dealers, the expected improvements in audit quality described previously would benefit such customers, along with investors, capital markets and auditors, while the final requirements are not expected to result in any direct costs or unintended consequences to customers of brokers and dealers.

III. Date of Effectiveness of the Proposed Rules and Timing for Commission Action

Pursuant to Section 19(b)(2)(A)(ii) of the Exchange Act, and based on its determination that an extension of the period set forth in Section 19(b)(2)(A)(i) of the Exchange Act is appropriate in light of the PCAOB's request that the Commission, pursuant to Section 103(a)(3)(C) of the Sarbanes-Oxley Act, determine that the proposed rules apply to the audits of EGCs, the Commission has determined to extend to July 3, 2019 the date by which the Commission should take action on the proposed rules.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rules are consistent with the requirements of Title I of 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/pcaob.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number PCAOB–2019–03 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 PCAOB–2019–03. 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/pcaob.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rules that are filed with the Commission, and all written communications relating to the proposed rules 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, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the PCAOB. All comments received will be posted without charge. 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 PCAOB–2019–03 and

[195] The staff analysis is based on 116 audit engagements of brokers and dealers performed by audit firms that were selected for inspection in 2017. The results of the analysis found that the auditor did not use the work of a specialist in about 90% of the broker or dealer audits. This analysis also found that auditors used the work of at least one auditor's specialist in about 8% of the audits analyzed and used the work of at least one company specialist in about 2% of those audits.

should be submitted on or before April 25, 2019.

For the Commission, by the Office of the Chief Accountant, by delegated authority.[196]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–06425 Filed 4–3–19; 8:45 am]

BILLING CODE 8011–01–P

[196] 17 CFR 200.30–11(b)(1) and (3).

FEDERAL REGISTER

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Part IV

The President

Proclamation 9853—Cancer Control Month, 2019
Proclamation 9854—National Child Abuse Prevention Month, 2019
Proclamation 9855—National Donate Life Month, 2019
Proclamation 9856—National Sexual Assault Awareness and Prevention Month, 2019
Proclamation 9857—Second Chance Month, 2019
Memorandum of April 1, 2019—Delaying Submission of the Small Business Report Under the Trade Facilitation and Trade Enforcement Act of 2015

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Presidential Documents

Title 3—

The President

Proclamation 9853 of March 29, 2019

Cancer Control Month, 2019

By the President of the United States of America

A Proclamation

During Cancer Control Month, we recognize the fearless spirit of millions of Americans who are battling cancer and celebrate the nearly 17 million cancer survivors who are alive today. We also solemnly remember and honor the memory of those beloved family members, friends, and neighbors who have been taken from us by this terrible disease. As I have said many times, our Nation will never give up our search for effective and innovative medical procedures to treat and prevent all forms of cancer.

Last year, more than 1.7 million Americans were diagnosed with some form of cancer and over 600,000 lost their lives to this disease—the second leading cause of death in the United States. There are, however, many hopeful signs of progress. The combined rate of death from all cancers continues to decline among both men and women, and death rates for many of the most common types of cancer—including lung, colon, and breast—are trending downward. These encouraging statistics reflect the outstanding work of our Nation's dedicated healthcare professionals to diagnose cancers at earlier stages and to improve prevention and treatment.

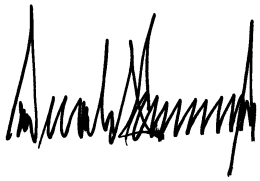
Americans can take important steps to decrease their risk of developing cancer. Maintaining a normal weight, practicing healthy eating habits, and engaging in regular physical activity are critical to preventing kidney, endometrial, esophageal, colon, and other forms of cancer. Avoiding the use of tobacco and excessive consumption of alcohol can also help the body prevent and fight cancers. Americans should also discuss their family health histories with their doctors and get recommended cancer screenings, which can lead to early diagnosis and help increase the odds of beating the disease.

My Administration is committed to supporting cutting-edge research and groundbreaking medical advances and treatments that better help cancer patients. Researchers at the National Institutes of Health are actively pursuing new approaches for the diagnosis and treatment of cancers, with special emphasis in the developing fields of genomics, precision medicine, and immunotherapy. Last year, I signed into law the Childhood Cancer Survivorship, Treatment, Access, and Research Act of 2018 to advance research on childhood cancers and effective treatments, support survivors, and better identify and track pediatric cancer rates. I also signed into law ''Right to Try'' legislation, which provides people diagnosed with terminal illnesses expanded options for care and treatment. And I am working with the Congress to invest $500 million over the next decade in cancer-related research to enable our Nation's best scientists and doctors to learn from every child with cancer, creating new opportunities to understand the unique causes of and find the best cures for childhood cancer.

We will control and defeat cancer, which has inflicted devastating suffering on too many American families. I have complete confidence in our Nation's innovators and scientists to overcome every challenge as they work day in and day out to rid us of this disease. Together, we will find the long-sought cure and eradicate the pain and death caused by the scourge of cancer.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 2019 as Cancer Control Month. I call upon the people of the United States to speak with their doctors and healthcare providers to learn more about preventative measures that can save lives. I encourage citizens, government agencies, private businesses, nonprofit organizations, and other interested groups to join in activities that will increase awareness of what Americans can do to prevent and control cancer. I also invite the Governors of the States and Territories and officials of other areas subject to the jurisdiction of the United States to join me in recognizing Cancer Control Month.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of March, in the year of our Lord two thousand nineteen, and of the Independence of the United States of America the two hundred and forty-third.



[FR Doc. 2019–06806
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Billing code 3295–F9–P

Presidential Documents

Proclamation 9854 of March 29, 2019

National Child Abuse Prevention Month, 2019

By the President of the United States of America

A Proclamation

Every child deserves the security of a stable, loving, and nurturing home. During National Child Abuse Prevention Month, we recognize the importance of all Americans working together each day in defense of the most vulnerable among us—our children. We must make every effort to ensure that they are treated with dignity and respect, and have the opportunity to pursue their dreams in secure and healthy environments.

The relationships that children have with parents, family members, teachers, and other caregivers profoundly shape their lives. When they are subjected to abuse and neglect, they are exposed to toxic stress that can disrupt early brain development and increase the risk of depression, suicide, substance abuse, developmental disabilities, future violence, juvenile delinquency, and other unhealthy behaviors. These and other devastating effects of child abuse can last a lifetime, and can even affect future generations.

As a Nation, we must do everything within our power to stop child abuse and neglect before they occur. The best defense against these menaces is a strong family led by loving and caring parents. My Administration has a broad vision for strengthening families, which includes raising awareness, focusing on prevention, and working to help parents and children thrive. For this reason, I signed into law the Family First Prevention Services Act—an important step in helping move child welfare to a more prevention-based system. This legislation increases the support available to at-risk families through services such as mental health and substance abuse treatment and parenting skill-based programs, so that more children may remain safely in their homes and communities.

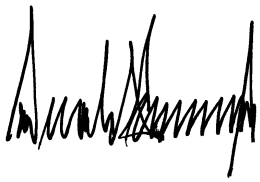
We cannot lose sight of the importance of the entire community in preventing child abuse and neglect. It is critically important for our children to have parents who care for their physical, intellectual, and emotional needs. But we also must acknowledge the friends, neighbors, educators, and faith leaders who help in promoting the well-being of children. We are especially grateful for foster and adoptive parents who graciously open their homes and lives to children in need of love and support. And we extend our deepest respect and gratitude to the professionals, volunteers, and organizations who work tirelessly to protect at-risk children and to care for those who have tragically experienced the traumas of abuse or neglect.

We pray for all those who have suffered from the terrors of child abuse and neglect and who continue to suffer from its devastating psychological and physical impacts. We honor the courageous survivors of abuse and neglect and hold in our hearts those cruelly taken from us. We strengthen our resolve to eradicate abuse and neglect from our homes and communities, and we pledge our unwavering commitment to preserving the innocence and safety of our Nation's children. Let us all strive each day to build a brighter future for them and for our country.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 2019 as National Child Abuse Prevention Month. I call upon all Americans to invest in

the lives of our Nation's children, to be aware of their safety and well-being, and to support efforts that promote their psychological, physical, and emotional development.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of March, in the year of our Lord two thousand nineteen, and of the Independence of the United States of America the two hundred and forty-third.



[FR Doc. 2019–06807
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Billing code 3295–F9–P

Presidential Documents

Proclamation 9855 of March 29, 2019

National Donate Life Month, 2019

By the President of the United States of America

A Proclamation

During National Donate Life Month, we recognize the courageous men and women who make the selfless decision to give the gift of life to their fellow Americans. Through the generosity of organ and tissue donors, thousands of people have the chance to live longer and fuller lives.

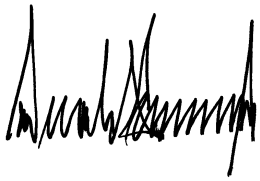
2018 marked the sixth consecutive record-setting year for transplants in the United States. More than 36,500 organs were transplanted, an increase of 5 percent over the previous year. These generous donations help fulfill a need for lifesaving organs that remains staggeringly high. Currently, there are nearly 114,000 people on the national transplant waiting list, and, tragically, 20 people die each day waiting for a needed organ. We can close the gap between the availability of organs and people in need of organs: Just 1 donor can save up to 8 lives through organ donation and enhance up to 50 lives through tissue donation.

In addition to those in need of organ donations, approximately 17,500 people in America are diagnosed each year with illnesses for which a bone marrow transplant is their best treatment option. In about 70 percent of these cases, a person's family member will not be an appropriate match, requiring a volunteer donor. Unfortunately, many patients cannot find a suitable match in time for the potentially lifesaving medical procedure among the 30 million adults who have offered to be donors. In 2018, for example, there were only 5,000 blood stem cell transplants performed in the United States—significantly fewer than the number of people who could benefit from such a procedure.

This month, we express our gratitude to the compassionate Americans who join organ and tissue registries and to the healthcare and science professionals who make the gift of life possible through these transplants. We also remember all those who have died waiting for matches. To honor their lives and provide hope for the thousands of Americans on waiting lists across the country, I encourage all those who are capable to consider becoming organ or tissue donors.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 2019 as National Donate Life Month. I call upon health professionals, volunteers, educators, government agencies, faith-based and community groups, and private organizations to help raise awareness of the urgent need for organ and tissue donors throughout our Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of March, in the year of our Lord two thousand nineteen, and of the Independence of the United States of America the two hundred and forty-third.



[FR Doc. 2019–06808
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Billing code 3295–F9–P

Presidential Documents

Proclamation 9856 of March 29, 2019

National Sexual Assault Awareness and Prevention Month, 2019

By the President of the United States of America

A Proclamation

Sexual assault has shattered and scarred the lives of millions of women, men, and children. During National Sexual Assault Awareness and Prevention Month, we reaffirm our commitment to eliminating sexual violence, empowering survivors and their families, and providing justice to the victims of this devastating crime.

While our Nation has made significant progress in sexual assault prosecution and prevention, and in providing compassionate care for survivors dealing with physical and emotional trauma, the battle to eradicate violence and heal lives is ongoing. My Administration supports innovative strategies to combat the many forms of sexual assault and to provide counseling, treatment, and advocacy for survivors nationwide. For example, to care for victims in rural communities who may lack proximity to clinics and trained forensic examiners, the Department of Justice's Office for Victims of Crime is increasing access to exams through 24-hour telemedicine administered by trained healthcare examiners. The Department of Justice's Office on Violence Against Women has created an updated sexual assault forensic examinations virtual practicum, which employs cutting-edge technology and interactive training to prepare forensic professionals to collect evidence and treat survivors of sexual assault. And the Department of Transportation has formed the National In-Flight Sexual Misconduct Task Force to assess how airlines respond to and report sexual misconduct allegations by passengers on commercial aircraft.

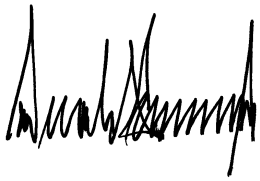
My Administration is also focused on eradicating sex trafficking, a form of sexual assault that amounts to modern-day slavery. Because many victims are trafficked online—sometimes by intimate partners, spouses, parents, or other family members—I signed into law the Allow States and Victims to Fight Online Sex Trafficking Act of 2017. This law makes it easier to take legal action against individuals who use websites to facilitate sex trafficking and helps victims seek justice against the websites that profit from their exploitation. It also clarifies that those who benefit from knowingly assisting, supporting, or facilitating an act of sex trafficking are in violation of Federal law.

Thanks to the dedication of professionals, volunteers, and concerned citizens, we are continuing to make strides in the fight against sexual assault. Young people are learning healthy dating and intimate relationship skills as a way to prevent sexual violence, and law enforcement officers and prosecutors are leading unprecedented efforts to fight sex trafficking. Victim centered services are also supporting survivors to get the critical help they deserve. By working together, we can prevent and end the sexual abuse and violence that devastate so many lives.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 2019 as National Sexual Assault Awareness and Prevention Month. I urge all Americans, families, law enforcement personnel, healthcare providers, and community

and faith-based organizations to support survivors of sexual assault and work together to prevent these crimes in their communities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of March, in the year of our Lord two thousand nineteen, and of the Independence of the United States of America the two hundred and forty-third.



[FR Doc. 2019–06809
Filed 4–3–19; 11:15 am]
Billing code 3295–F9–P

Presidential Documents

Proclamation 9857 of March 29, 2019

Second Chance Month, 2019

By the President of the United States of America

A Proclamation

Americans have always believed in the power of redemption—that those who have fallen can work toward brighter days ahead. Almost all of the more than two million people in America's prisons will one day return to their communities. In each case, they will have served their sentence and earned the chance to take their places back in society. During Second Chance Month, we draw attention to the challenges that former inmates face and the steps we can take to ensure they have the opportunity to become contributing members of society.

Inmates are often eager to leave behind the challenges presented by incarceration. Too often, however, they find the transition to life outside of prison to be daunting. If they are not able to find jobs and housing and rebuild relationships with family and friends, they may find it harder to escape the cycle of reoffending. Sadly, 5 out of 6 State prisoners are rearrested within 9 years of their release, and more than a third of former Federal prisoners will be rearrested within 5 years of their release. In addition to the harm caused to the victims of crime, these high recidivism rates place a significant financial burden on taxpayers, deprive our labor force of productive workers, and leave families without spouses, children, and parents.

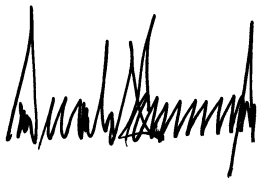
My Administration is committed to helping former prisoners reenter society as productive, law-abiding citizens. For this reason, I signed into law the bipartisan FIRST STEP Act. This new legislation makes several positive reforms to increase the likelihood of successful prisoner reentry. The legislation provides improved opportunities for inmates to engage in educational coursework and vocational training, and establishes pilot mentorship programs. It also allows prisoners who successfully complete evidence-based recidivism reduction programs to earn time credits to apply toward prerelease custody or supervised release, reducing their time in prison. Because maintaining family and community ties is key to a successful reentry into society, the bill includes provisions that allow inmates to be placed in facilities closer to their home communities, facilitating family visitation during their time of incarceration. Finally, the law makes adjustments to sentencing rules that will make our criminal justice system more fair, reducing penalties for certain drug offenders.

This month, we celebrate those who have exited the prison system and successfully reentered society and renew our commitment to providing support and resources that former inmates need to meet their responsibilities, rediscover their self-worth, and benefit from the gift of a second chance. We also express our sincere gratitude to all those who play a significant role in helping reduce recidivism, including faith-based and community organizations and employers willing to hire workers notwithstanding a criminal history. By reducing recidivism and putting former inmates on the path to success, we can reduce crime and enhance the safety of our communities.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution

and the laws of the United States, do hereby proclaim April 2019 as Second Chance Month. I call on all Americans to commemorate this month with events and activities that raise public awareness about preventing crime and providing those who have completed their sentences an opportunity for an honest second chance.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of March, in the year of our Lord two thousand nineteen, and of the Independence of the United States of America the two hundred and forty-third.



[FR Doc. 2019–06810
Filed 4–3–19; 11:15 am]
Billing code 3295–F9–P

Presidential Documents

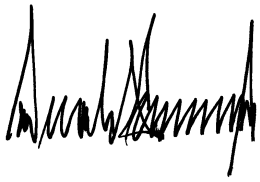
Memorandum of April 1, 2019

Delaying Submission of the Small Business Report Under the Trade Facilitation and Trade Enforcement Act of 2015

Memorandum for the Chief Counsel for Advocacy of the Small Business Administration

The Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA) (Public Law 114–125) requires you to submit to the Congress a report on the economic impacts of a covered trade agreement on small businesses not more than 180 days after you convene an Interagency Working Group for the relevant trade agreement. The reports for the negotiations of trade agreements with Japan, the European Union, and the United Kingdom will be due during the course of negotiations. To ensure that the negotiations are not disrupted, however, by the authority vested in me as President by the Constitution and the laws of the United States of America, including section 502 of the TFTEA, I require you to delay the submission of each report until after the relevant negotiation is concluded, but not later than 30 days after the trade agreement is signed, provided that the delay allows you to submit the report to the Congress not later than 45 days before the Senate or the House of Representatives acts to approve or disapprove the trade agreement.

You are authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,
Washington, April 1, 2019

[FR Doc. 2019–06811
Filed 4–3–19; 11:15 am]
Billing code 8205–01–P

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Thursday, April 4, 2019

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